No. 2616

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

AETNA LIFE INSURANCE COMPANY,
a corporation,
Plaintiff in Error,

vs.

PORTLAND GAS & COKE COMPANY,
a corporation,
Defendant in Error.

TRANSCRIPT OF RECORD.

In Error to the District Court of the United States for the District of Oregon.

GLASS & PRUDHOMME CO., PORTLAND, OREGON

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INDEX.

INDEX—Continued.

INDEX—Continued.

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a Corporation,
Defendant in Error.

NAMES AND ADDRESSES OF THE ATTORNEYS OF RECORD:

Senn, Eckwall & Recken, Yeon Building, Portland, Oregon, for the Plaintiff in Error.

John A. Laing and H. W. Strong, Spalding Building, Portland, Oregon, and John F. Logan, Mohawk Building, Portland, Oregon, for the Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America,
District of Oregon,—ss.

To Portland Gas & Coke Company, greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein the Aetna Life Insurance Company is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this seventeenth day of August in the year of our Lord, one thousand, nine hundred and fifteen.

R. S. BEAN, Judge.

Filed August 17, 1915.

G. H. MARSH, Clerk.

In the United States Circuit Court of Appeals for the Ninth District.

AETNA LIFE INSURANCE COMPANY,
a corporation,
Plaintiff in Error,
vs.
PORTLAND GAS & COKE COMPANY,
a corporation,
Defendant in Error.

WRIT OF ERROR.

The United States of America, ss.

The President of the United States of America.

To the Judge of the District Court of the United States for the District of Oregon, greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between Portland Gas & Coke Company, a corporation, Plaintiff and Defendant in Error, and Aetna Life Insurance Company, a corporation, Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and

openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 12th day of August, 1915.

(Seal) U. S. District Court,
District of Oregon.

G. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.

Filed August 12, 1915. G. H. Marsh, Clerk, United States District Court, District of Oregon.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

March Term, 1915

Be it Remembered, That on the 5th day of May, 1915, there was duly filed in the District Court of

the United States for the District of Oregon, a Transcript of Record on Removal from the Circuit Court of the State of Oregon for Multnomah County, in words and figures, as follows, to wit:

In the Circuit Court of the State of Oregon for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

COMPLAINT.

Comes now the plaintiff and for its first cause of action against the defendant, complains and alleges:

I.

That plaintiff is a corporation organized and existing under the laws of the State of Oregon, and from the 20th day of March, 1913, to the first day of January, 1914, was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings between the Willamette River and the Linnton Road in Multnomah County, Oregon, and employed a large number of men in such work.

II.

That the defendant is a corporation organized and existing under the laws of Connecticut, is engaged in general life, liability and accident insurance and has complied with the laws of Oregon with reference to foreign insurance companies transacting business within the State of Oregon.

III.

That on or about March 20th, 1913, the defendant, upon the request of the plaintiff and upon the payment by plaintiff to defendant of the premiums required, duly made, executed and delivered to plaintiff policy of insurance numbered "Policy No. E. 91221" entitled "Contractors Employer's Liability Policy," by which policy the defendant, in consideration of the premium provided in the policy, promised and agreed to indemnify the plaintiff against loss and/or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of the said construction work and business conducted by the plaintiff on said premises adjoining the Government Moorings, whether said injuries are accidentally suffered or alleged to have been suffered at the location or elsewhere, and to defend at its own cost any and all actions brought against the plaintiff to enforce a claim for damages covered by said policy; provided,

that the plaintiff forthwith forward to the defendant every summons or other process as soon as the same shall have been served upon it; that in said policy it was expressly provided that, subject to all agreements and conditions expressed therein, claims were covered whenever arising on account of accidents or alleged accidents occurring during the time said policy was in force.

IV.

That the term of said policy was for a period of six months, beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon and that by agreements duly made and endorsed on said policy, the said policy period was extended from time to time to noon of January 1st, 1914, and that said policy was in full force and effect during all such time.

V.

That in carrying on said construction work on said premises the plaintiff had water carried from certain sources of water supply in that vicinity for use by the employes of the plaintiff for drinking purposes in said construction work on said premises; that there was no drinking water on said premises and the carrying and furnishing of drinking water to its employes was incident in, and part of, the construction work carried on by said plaintiff on said premises.

VI.

That during a portion of the months of August and September, 1913, and while said policy of insurance was in full force and effect, the plaintiff had in its employ on said construction work on said premises, among others an employe by the name of Louis Weich, who was working for the plaintiff as a common laborer, excavating for concrete foundations, being one of the classified descriptions of business covered by said policy of insurance; that while so employed said Weich drank the water furnished him by the plaintiff; that on or about the 16th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that on or about the 15th day of January, 1914, commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that the water furnished him by the plaintiff herein was unwholesome and unfit for drinking purposes, and that the plaintiff herein carelessly and negligently failed to deliver to him wholesome drinking water but instead thereof delivered to him unwholesome water which was then and there impregnated with typhoid germs and wholly unfit for drinking purposes, and that the plaintiff herein well knew, or by the exercise of reasonable precaution should have known, that the water delivered to him was unwholesome and was impregnated with typhoid germs and was unfit for drinking purposes, and that by reason of his drinking such unwholesome water he contracted

typhoid fever, without any fault on his part, and then and there was rendered sick and was on the 16th day of September, 1913, confined to his bed by reason of typhoid fever and was compelled to remain in bed for a long period, to-wit: three months, and was made sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and his mental system was permanently shattered and he was seriously and permanently injured in that his heart was inflamed and the valves and muscles thereof were wholly and permanently incapacitated from performing their normal functions and the lower limbs of Weich were benumbed and paralyzed and he alleged his damages at the sum of twenty thousand dollars ($20,000.00) and demanded judgment against plaintiff herein for said sum.

VII.

That plaintiff immediately upon being served with summons and complaint in said action, forwarded to the defendant the summons and copy of complaint and all processes served upon it in said action, and called upon the defendant to defend such action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and/or expense arising or resulting from said claim of Louis Weich, as it had agreed to do under said policy of insurance, but that the defendant refused to defend such action and denied all liability therefor on the sole ground that

accidentally, and that therefore said policy did not cover such claim; that the plaintiff herein thereupon employed attorneys and incurred expense in the defense of said action; that it filed answer denying liability and put said Weich upon proof of all the allegations of said complaint, that said case was duly and regularly heard and tried by a jury duly empanelled in said court and cause and that said trial resulted in a verdict in favor of said Louis Weich and against the plaintiff herein in the sum of $700.00 and his costs and disbursements; that thereafter plaintiff herein settled and compromised said judgment by paying to said Louis Weich in full settlement and compromise of said claim and said judgment the sum of $600.00 on or about the 30th day of April, 1914; that the expense reasonably incurred by the plaintiff herein in the defense and settlement of said action and the actual loss and expense sustained and paid in money by plaintiff herein arising or resulting from said claim upon the plaintiff, including said sum paid to said Louis Weich, amounted to the sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) and is itemized as follows:

Filing fee, less refund	$ 2.90
Automobile hire	21.38
Attorneys' and Claim Agent's fees	588.00
Reporter's fees	232.90
Witness fees	75.70
Doctors' fees (expert testimony)	160.00
Sum paid in compromise settlement	600.00
	$1680.88

That said sums were paid by the plaintiff between the dates of February 1st and April 30th, 1914, and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) together with interest thereon at the rate of six per cent. per annum from the 30th day of April, 1914, until paid, no part of which has been paid.

VIII.

That plaintiff has complied with all the conditions named in said policy on its part to be performed as conditions precedent to its right to bring this action insofar as said conditions could be complied with by it, in view of defendant's denial of liability and its refusal to defend said claim or to live up to its obligations under said policy, and that the above claim does not fall within any of these excepted claims mentioned in said policy and is within the limits of liability fixed by said policy and is a claim covered by said policy.

IX.

That the sum of one hundred sixty-eight dollars ($168.00) is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a second cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in this second cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, the plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of Joseph Duerst, who was working for the plaintiff as a common laborer at pile-driving, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed said Duerst drank the water furnished to him by the plaintiff, and that on or about the 30th day of September, 1913, he quit the employ of plaintiff on account of having contracted typhoid fever, and that on the 9th day of April, 1914, commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that between the first day of August, 1913, and the 30th day of September, 1913, he was employed by the plaintiff herein in and about the construction of said gas plant and factory, and that during all of said time, pursuant to his said employment, plaintiff herein undertook to deliver to him wholesome water for drinking purposes while he was engaged in said work, and that the plaintiff herein in utter

disregard of its duty and obligation to furnish him with wholesome water, carelessly and negligently failed to deliver to him wholesome drinking water and carelessly and negligently and without due consideration of his health, furnished and delivered to him for drinking water which was then and there impure, unwholesome, impregnated with disease germs and with typhoid fever germs and wholly unfit for drinking purposes and that the plaintiff well knew, or by the exercise of reasonable precaution should have known, that the water so delivered was impure and unwholesome and impregnated with disease germs and with typhoid germs and wholly unfit for drinking purposes; that he used said water so furnished by the plaintiff herein and by reason of drinking said water contracted typhoid fever and was thereby rendered sick and ill and was, on the said 30th day of September, 1913, confined to his bed and by reason of said illness and for a period of three months thereafter was sick, ill and incapacitated from said disease and compelled to remain in bed under the care of doctors and nurses and was disabled and his vitality and physical condition depleted to a considerable extent and that as a result of drinking said water and of contracting said disease he contracted psoriases, and that his body and face have been as a result of the alleged negligence and carelessness of the plaintiff herein affected, blotched, discolored, disfigured and broken out in inflamed spots and sores and that he has become permanently disabled and unable to perform manual or

other labor, to his damage in the sum of twenty thousand ($20,000.00) dollars, and that he has been compelled to expend one hundred twenty-seven dollars ($127.00) for hospital bills and seventy-five dollars ($75.00) for doctor bills, and he demanded judgment against the plaintiff herein for said sums.

III.

That plaintiff herein immediately upon being served with summons and complaint in said action, forwarded to the defendant the summons and copy of complaint and all processes served upon it in said action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and/or expense arising or resulting from said claim of Joseph Duerst as it had agreed to do under said policy of insurance, but that the defendant refused to defend said action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally and that therefore said policy did not cover said claim; that the plaintiff herein thereupon employed attorneys and incurred expense in the defense of such action; that it filed an answer denying all liability and that after said case was at issue the plaintiff herein settled and compromised said claim and said action by paying to said Joseph Duerst in full settlement and compromise of his said claim the sum of one hundred fifty dollars ($150.00) on or about the 31st day of August, 1914; that the

expense reasonably incurred by the plaintiff herein in the defense and settlement and compromise of said action and the loss and expense sustained and paid in money by the plaintiff herein arising or resulting from said claim upon it, including said sum paid to Joseph Duerst amounted to the sum of two hundred sixty-two dollars and thirty cents ($262.30) and is itemized as follows:

Settlement and compromise with Duerst	$150.00
Clerk's fees, less refund	0.95
Doctors' fees in examination	15.00
Attorney's and Claim Agent's fees	96.35
	$262.30

That said sums were paid between the dates of April 1st and August 31st, 1914, and that there is now due and owing to the plaintiff from the defendant said sum of two hundred sixty-two dollars and thirty cents ($262.30) together with interest thereon at the rate of six per cent. per annum from the 31st day of August, 1914, no part of which has been paid.

IV.

That the sum of twenty-six dollars ($26.00) is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a third cause of action against the defendant, complains and alleges:

I.

Plaintiff incorporates in this third cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

II.

That during the months of July and August, and the first part of September, 1913, while said policy of insurance was in full force and effect the plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of C. Hastings, who was working for the plaintiff as a common laborer as stock and timekeeper, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Hastings drank the water furnished him by the plaintiff, and that on or about the 10th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein, in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Hastings that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known that the water was impure and unwholesome and impreg-

nated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 10th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff, unless the settlement was made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Hastings, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Hastings, but that the defendant denied all liability for said claim and refused to *having* anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the

sum of one hundred fifty dollars ($150.00), which sum was paid unto said Hastings, on or about the first day of September, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon plaintiff amounted to the sum of fifty dollars ($50.00) in addition to said sum of one hundred fifty dollars and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of two hundred dollars, together with interest thereon at the rate of six per cent. per annum from December 1st, 1914.

IV.

That the sum of twenty dollars is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a fourth cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in this fourth cause of action by reference thereto and makes a part hereof Paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance

was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of Otto Bush, who was working for the plaintiff as a carpenter, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Bush drank the water furnished him by the plaintiff, and that on or about the 8th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Bush that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid *typhoid* germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 8th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and

disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Bush, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Bush, but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigaton settled and compromised said claim for the sum of one hundred dollars, which sum was paid unto said Bush on or about the first day of April, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon plaintiff amounted to the sum of twenty-five dollars ($25.00) in addition to said sum of one hundred dol-

lars and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of one hundred twenty-five dollars, together with interest thereon at the rate of six per cent. per annum from April 1st, 1914.

IV.

That the sum of twelve dollars and fifty cents is a reasonable sum for the court to allow for attorney's fees in this cause of action.

Plaintiff for a fifth cause of action against the defendant, complains and alleges:

I.

Plaintiff incorporates in this fifth cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of George Harbick, who was working for the plaintiff as a common laborer in the insulation of electrical equipment, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Harbick drank the water

furnished bim by the plaintiff, and that on or about the 11th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Harbick that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 11th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time, and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Harbick and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Harbick, but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigaton settled and compromised said claim for the sum of one hundred twenty-five dollars, which sum was paid unto said Harbick on or about the first day of March, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon the plaintiff amounted to the sum of twenty-five dollars ($25.00) in addition to said sum of one hundred twenty-five dollars and that there is now due and owing to the plaintiff from defendant on account of said claim the sum of one hundred fifty dollars, together with interest thereon at the rate of six per cent. per annum from March 1st, 1914.

IV.

That the sum of fifteen dollars is a reasonable sum

for the court to allow as attorney's fees in this cause of action.

Plaintiff for a sixth cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in this sixth cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of F. Kohl, who was working for the plaintiff as a common laborer engaged in road making, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Kohl drank the water furnished him by the plaintiff, and that on or about the 11th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Kohl that the water furnished him for drinking purposes by the plaintiff

herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff knew, or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes, and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 11th day of September, 1913, and was confined to his bed by reason or having typhoid fever and was compelled to remain in bed for a long time, and was sick, sore, lame and disordered and wholly incapacitated for work: that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Kohl, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Kohl, but that the defendant denied all liability for said claim and re-

fused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred fifty dollars, which sum was paid unto said Kohl on or about the 1st day of March, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon the plaintiff amounted to the sum of twenty-five dollars, in addition to said sum of one hundred fifty dollars and that there is now due and owing to the plaintiff from defendant on account of said claim, the sum of one hundred seventy-five dollars, together with interest thereon at the rate of six per cent. per annum from March 1st, 1914.

IV.

That the sum of seventeen dollars and fifty cents is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a seventh cause of action against the defendant, complains and alleges:

I.

Plaintiff incorporates in this seventh cause of action by reference thereto and makes a part hereof

paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of I. M. Andrus, who was working for the plaintiff as a millwright in erecting the machinery for the briquetting plant, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed as such millwright said I. M. Andrus drank the water furnished him by the plaintiff and that on or about the 7th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever and that on or about the 13th day of February, 1914, he commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon for Multnomah County in which he alleged that the water furnished him by the plaintiff herein was unwholesome and unfit for drinking purposes, and that plaintiff herein carelessly and negligently failed to deliver to him wholesome drinking water but instead thereof delivered to him unwholesome and impure water which was then and there impregnated with typhoid germs and wholly unfit for drinking purposes and that the plaintiff herein knew, or by the exercise of reasonable care and caution should have known that the

water delivered to him was unwholesome and was impregnated with typhoid germs and was unfit for drinking purposes; that by reason of his drinking such unwholesome water he contracted typhoid fever without any fault on his part and was then and there rendered sick and was on said 11th day of September, 1913, confined to his bed by reason of typhoid fever and was compelled to remain in bed and in the hospital for eleven and one-half weeks and that by reason of, and as a direct and proximate result of said careless and negligent act on the part of the plaintiff herein in furnishing said impure and unwholesome water he suffered great pain and mental anguish, suffered from *deliriu,* high fever and unconsciousness and that his brain, spinal cord, nerves and nervous system generally were poisoned and inflamed; that he suffered paralysis of certain muscles of his arms and legs and that he had toe drop in his left foot and an incomplete wrist drop in his right hand and was numb to pin prick over part of the back of his right hand and forearm and over the front of his left leg and ankle and that he was permanently injured and incapacitated from performing any work whatsoever; that he alleged his damages at the sum of twenty-five thousand dollars ($25,000.00) with three hundred forty-seven dollars ($347.00) special damages for hospital and doctor fees and demanded judgment against the plaintiff herein for said sum.

III.

That plaintiff immediately upon being served with summons and complaint in said action forwarded to the defendant a copy of said summons and complaint and all processes served upon it in said action, and called upon the defendant to defend said action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and/or expense arising or resulting from said claim of I. N. Andrus, as it had agreed to do under said policy of insurance; but that the defendant refused to defend such action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally and that therefore said policy did not cover said claim; that the plaintiff thereupon employed attorneys and incurred expense in the defense of said action; that it filed answer denying liability and put said Andrus upon proof of all the allegations of said complaint, that said case was duly and regularly heard and tried by a jury duly empanelled in said court and cause and that said trial resulted in a verdict in favor of said Andrus and against the plaintiff herein in the sum of fifty-five hundred dollars ($5,500.00) and his costs and disbursements taxed at sixty-four dollars and ninety-five cents ($64.95), that thereafter plaintiff herein appealed said case to the Supreme Court of the State of Oregon and while said appeal was pending a compromise settlement was made and effected between the plaintiff herein and said I. M. Andrus in

which said judgment and claim of said Andrus against the plaintiff herein was compromised and settled for the sum of sixteen hundred thirty-five dollars ($1,635.00) on or about the 22nd day of March, 1915; that the expense reasonably incurred by the plaintiff herein in the defense of said action and in appeal to the Supreme Court and in the settlement thereof and the actual loss and expense sustained and paid in money by the plaintiff herein arising or resulting from said claim upon the plaintiff herein by said I. M. Andrus amounted to the sum of twenty-seven hundred eighty-five dollars and ninety-four cents ($2,785.94) and is itemized as follows:

Fees in Circuit Court	$ 9.15
Witness fees and expert testimony	90.00
Reporter's fees	150.70
Automobile expense	1.75
Appeal bond	27.50
Filing fee in Supreme Court and copy of transcript	28./48
Printed abstract and briefs in Supreme Court	82.16
Attorneys' and Claim Agent's fees	761.20
Amount paid in compromise settlement	1635.00
	$2785.94

That said sums were paid by the plaintiff herein between the dates of February 13th, 1913, and March 22nd, 1915, and that there is now due and owing to

the plaintiff herein from the defendant on account of said claim said sum of twenty-seven hundred eighty-five dollars and nin*e*y-four cents, together with interest thereon at the rate of six per cent. per annum from the 22nd day of March, 1915, until paid, no part of which has been paid.

IV.

That the sum of two hundred seventy-eight dollars and sixty cents is a reasonable sum for the court to allow as attorney's fees in this seventh cause of action.

WHEREFORE, plaintiff demands judgment against the defendant herein on its first cause of action for the sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) with interest thereon at the rate of six per cent. per annum from April 30th, 1914, together with the sum of one hundred sixty-eight dollars ($168.00) attorney's fees, for the sum of two hundred sixty-two dollars and thirty cents ($262.30) with interest thereon at the rate of six per cent. per annum from the 31st day of August, 1914, together with the sum of twenty-six dollars ($26.00) attorney's fees in the second cause of action: for the sum of two hundred dollars ($200.00) with interest thereon at the rate of six per cent. per annum from December 1st, 1914, together with the sum of twenty dollars ($20.00) attorney's fees, in the third cause of action; for the sum of one hundred twenty-five ($125.00) with in-

terest thereon at the rate of six per cent. per annum from April 1st, 1914, together with the sum of twelve dollars and fifty cents ($12.50) attorney's fees, in the fourth cause of action; for the sum of one hundred fifty dollars ($150.00) with interest thereon at the rate of six per cent. per annum from March 1st, 1914, together with the sum of fifteen dollars ($15.00) attorney's fees, in the fifth cause of action; for the sum of one hundred seventy-five dollars ($175.00) with interest thereon at the rate of six per cent. per annum from March 1st, 1914, together with seventeen dollars and fifty cents ($17.50) attorney's fees, in the sixth cause of action, and for the sum of twenty-seven hundred eighty-five dollars and ninety-four cents ($2785.94) with interest thereon at the rate of six per cent. per annum from March 22nd, 1915, together with two hundred seventy-eight dollars and sixty cents ($278.60) attorney's fees, in the seventh cause of action and for plaintiff's costs and disbursements incurred therein.

JOHN A. LAING,
JOHN F. LOGAN,
H. W. STRONG,
Attorneys for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, Geo. F. Nevins, being first duly sworn, depose and say: That I am Secretary of Portland Gas & Coke Company, a corporation, plaintiff in the foregoing action; that I have read the foregoing com-

plaint, know the contents thereof, and that the same are true as I verily believe.

GEO. F. NEVINS,

Subscribed and sworn to before me this 12th day of March, 1915.

(Notarial Seal)

H. E. MANGHUM,
Notary Public for Oregon.

"Endorsed." Filed April 12, 1915.
JNO. B. COFFEY, Clerk.
WELLS, Deputy.

In the Circuit Court of the State of Oregon for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff

vs.

AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

PETITION

To the Honorable, The Circuit Court of the State of Oregon for the County of Multnomah:

Your petitioner, the Aetna Life Insurance Company, respectfully shows to this court:

That it is the defendant in the above entitled action. That said action is of a civil nature and the matter in dispute in said action and cause exceeds the sum and value of three thousand dollars, exclusive of costs, to-wit: a sum of approximately six thousand dollars.

That the controversy herein is between citizens, inhabitants and residents of different states. That the said plaintiff above named, was at the time of the commencement of this action and ever since has been and still is, a corporation, organized and existing under and by virtue of the laws of the State of Oregon, and is a citizen, resident and inhabitant of the state of Oregon, and your petitioner, Aetna Life Insurance Company, was at the time of the commencement of this action and ever since has been and still is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and is not a citizen, resident and inhabitant of the State of Oregon, but is a resident and citizen and inhabitant of the State of Connecticut.

That your petitioner desires to remove this action before the trial thereof into the next District Court of the United States, and within thirty days from the date of the filing of this petition, and your Petitioner offers herewith good and sufficient bond and surety for its entering into said District Court of the United States, within thirty days from the date of the filing of this petition, a copy of the record

in this cause and action and for paying the costs that may be awarded by the said District Court of the United States, if said District Court shall hold or find that this action or cause was wrongfully or improperly removed thereto and your petitioner herein prays that the said surety and bond herein may be accepted and that this action may be removed into said District Court of the United States as aforesaid, pursuant to the statutes of the United States, in such cases made and provided and that no further proceedings may be had herein in this court and that your Honorable court will make an order approving said bond and an order of removal of said action and to that end the defendant and your Petitioner will ever pray.

SENN, EKWALL & RECKEN,
Attorneys for Defendant & Petitioner.

State of Oregon,
County of Multnomah,—ss.

I, W. E. Pearson being first duly sworn, depose and say that I am one of the Managing Agents of the Defendant, Aetna Life Insurance Co. in the above entitled action; and that the foregoing petition is true as I verily believe.

W. E. PEARSON.

Subscribed and sworn to before me this 16th day of April, 1915.

(Notarial Seal)

LOUIS A. RECKEN,
Notary Public for the State of Oregon.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the within Petition is hereby acknowledged in Multnomah County, Oregon, this 17th day of April, 1915.

JOHN A. LAING,
One of the Attorneys for Plaintiff.

"Endorsed."

Filed Apr. 17, 1915.

JNO. B. COFFEY,
Clerk.
WELLS,
Deputy.

In the Circuit Court of the State of Oregon for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

NOTICE OF REMOVAL.

TO THE ABOVE NAMED PLAINTIFF and to your attorneys, John A. Laing, John F. Logan and H. W. Strong:

Please take notice that the above named defendant, the Aetna Life Insurance Company, has filed in

the Circuit Court of the State of Oregon, County of Multnomah its petition and bond for the removal of said action to the District Court of the United States for the District of Oregon and will apply to said court on the 17th day of April, 1915, at the hour of 9:30 o'clock in the forenoon of said day, or as soon thereafter as said defendant may be heard for an order of removal of said cause to the said District Court of the United States, and for the approval of said bond and a stay of further proceedings in this court.

SENN, EKWALL & RECKEN,
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the within Notice of Removal is hereby accepted in Multnomah County, Oregon, this 17th day of April, 1915.

JOHN A. LAING,

One of the Attorneys for Plaintiff.

"Endorsed."

Filed Apr. 17, 1915.

JNO. B. COFFEY,
Clerk.

By WELLS,
Deputy.

In the Circuit Court of the State of Oregon in and for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff.

vs.

AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Aetna Life Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and having an office and place of business in the City of Portland, Multnomah County, Oregon, as principal; and The Aetna Accident and Liability Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and authorized and empowered under the laws of the State of Oregon to become surety on bonds, and undertakings, are holden and stand firmly bound unto the Portland Gas & Coke Company, the plaintiff above named in the penal sum of five hundred dollars for the payment whereof well and truly to be made unto the said Portland Gas & Coke Company, the above named plaintiff, its successors, representatives and assigns, we bind ourselves, our representatives, successors and assigns, jointly and firmly by these presents.

Upon the condition nevertheless, that whereas the said plaintiff, Portland Gas & Coke Company has filed an action against the defendant Aetna Life Insurance Company, in the above entitled court, and the said defendant, Aetna Life Insurance Company has filed its petition with said Circuit Court of the State of Oregon, for the removal of said action to the District Court of the United States, for the District of Oregon.

Now if the said Aetna Life Insurance Company shall enter into said District Court of the United States, within thirty days from the date of the filing of the petition herein, a copy of the record in said action and shall well and truly pay all costs that may be made by said District Court of the United States, if said District Court, shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and virtue.

IN WITNESS WHEREOF, We the said Aetna Life Insurance Company and The Aetna Accident & Liability Company have hereunto set our hands and seals this 16th day of April, 1915.

AETNA LIFE INSURANCE COMPANY,

W. E. Pearson, Managing Agent.

THE AETNA ACCIDENT & LIABILITY CO.

W. E. Pearson.
Its Resident Vice President.

Attest: Frank S. Senn,
Its Resident Asst. Secretary.
McCargar, Bates & Lively,
Its Local and General Agents.

By W. E. Pearson,
Member of Firm.

(The A. A. & L. Co.
Inc. Seal.)

State of Oregon.
County of Multnomah,—ss.

Due service of the within bond is hereby accepted in Multnomah County, Oregon, this 17th day of April, 1915.

JOHN A. LAING,
One of the Attorneys for Plaintiff.

"Endorsed."
Filed Apr. 17, 1915.

JNO. B. COFFEY,
Clerk.

By WELLS,
Deputy.

BE IT REMEMBERED, That at a regular term of the Circuit Court of the State of Oregon, for the County of Multnomah, begun and held at the County Court House in the city of Portland, in said County and State on MONDAY, the 5th day of April, A. D. 1915, the same being the first Monday in said month, and the time fixed by law for holding a regular term of said court.

Present, Hons. John P. Kavanaugh, Robert G. Morrow, Henry E. McGinn, Geo. N. Davis and William N. Gatens and C. U. Gantenbein, Judges.

Whereupon, on this Saturday the 17th day of April, A. D. 1915, the same being the 12th Judicial day of said term of court, among other proceedings the following was had, to-wit:

In the Circuit Court of the State of Oregon for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

ORDER

The defendant herein having within the time provided by law filed its petition for the removal of this action to the District Court of the United States for the District of Oregon and having at the same time filed its bond in the sum of $500 with good and sufficient surety pursuant to statute and conditioned according to law and notice to plaintiff of this application having been given and the defendant appearing by its attorneys, Senn-Ekwall and Recken.

NOW THEREFORE this court does hereby accept and approve said bond and finding the facts set forth in said petition to be true does hereby order and decree that this action and cause be and the same is hereby removed into the District Court of the United States for the District of Oregon, and that all other or further proceedings of this action or cause in this court be and the same are hereby stayed and the clerk of this court is hereby directed to transmit forthwith to said District Court of the United States for the District of Oregon, a certified transcript of all the record herein.

Dated April 17th, 1915.

C. U. GANTENBEIN,
Judge of above entitled Court.

In the Circuit Court of the State of Oregon for the County of Multnomah.

State of Oregon,
County of Multnomah,—ss.

I, Jno. B. Coffey, County Clerk and ex-officio clerk of the Circuit Court of the State of Oregon in and for the County of Multnomah, do hereby certify that the foregoing copies of pleadings, papers, orders and journal entries consitutes the entire record together with the notice of Removal and undertaking on removal in the case of Portland Gas & Coke Company, a corporation, plaintiff vs. Aetna Life Insurance Company, a corporation, defendant,

have been by me compared with the originals thereof, and that they are true and correct transcripts of such original Pleadings, Papers, Orders, Journal Entries, Notice of Removal and Undertaking on Removal as the same appear of record and on file at my office and in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court the 5th day of May, 1915.

JNO. B. COFFEY, Clerk.
By J. H. BUSH, Deputy.

(Seal)

Transcript on Removal Filed May 5, 1915.

G. H. MARSH,
Clerk United States District Court, District of Oregon.

And afterwards, to-wit, on the 18th day of May, 1915, there was duly filed in said court, and cause a Demurrer in words and figures as follows, to-wit:

DEMURRER TO COMPLAINT.

Comes now the defendant in the above entitled action and demurs to the complaint of the plaintiff herein, for the reason that the same does not state facts sufficient to constitute a cause of action against the defendant.

SENN, ECKWALL & RECKEN,
Attorneys for defendant.

I, F. S. Senn, one of the attorneys for the defendant hereby certify that the foregoing demurrer is made in good faith, and is not made for the purpose of hindering or delaying the trial of the above entitled action, and I believe that the point raised by said demurrer is well taken.

F. S. SENN.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the within Demurrer is hereby accepted in Multnomah County, Oregon, this 18th day of May, 1915.

H. W. STRONG,
One of the Attorneys for Plaintiff.

Filed May 18, 1915.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on Monday, the 21st day of June, 1915, the same being the 98th judicial day of the regular March term of said court; present: the Honorable Robert S. Bean, United States Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER OVERRULING DEMURRER.

This cause was heard upon the demurrer to the complaint herein and was argued by Mr. J. A. Laing, Mr. John F. Logan and Mr. H. W. Strong,

of counsel for the plaintiff, and by Mr. F. S. Senn, of counsel for the defendant; on consideration whereof, it is ORDERED and ADJUDGED that said demurrer be, and the same is hereby overruled.

And afterwards, to-wit, on the 21st day of June, 1915, there was duly filed in said court and cause, an Opinion, in words and figures as follows, to-wit:

OPINION ON DEMURRER.

Portland, Oregon, Monday, June 21, 1915.

R. S. BEAN, D. J., (ORAL)

The case of the Portland Gas & Coke Company vs. the *Aet*na Life Insurance Company is an action on an indemnity policy by which the company agreed to indemnify the plaintiff against loss and (or) expense arising or resulting from claim upon the assured for damages on account of bodily injuries and (or) death accidentally suffered by an employe.

Certain employes of the plaintiff company contracted typhoid fever from water furnished for their use by the plaintiff. They brought actions against the plaintiff company and recovered damages on account thereof, and the question for decision in this case is whether that constitutes a bodily injury accidentally received or suffered within the meaning of this policy.

It will be observed that the language of this policy is exceedingly broad. It differs from many indemnity policies in that liability is not limited to injuries received from external violence nor to accidents which result in producing visible external marks or injuries, or evidence of violence, but it is a broad indemnity against injuries resulting from accidental causes.

Now, the English Workman's Compensation Act of 1897 provided for compensation to workmen for personal injury by accident arising in the course of their employment. While a workman was engaged in sorting wool a bacillus passed from the wool to his eye, afflicting him with anthrax from which he died. On appeal to the Privy Counsel it was held that the injury was due to an accident within the meaning of this law, because first it was an accident that the bacillus happened to be in the wool; second, it was an accident that it settled on the workman in a delicate or tender spot, and third, it was an accident that the poison found its way into the workman's system and caused his death. And therefore the court held that the case came within the Compensation Act. On the same reasoning it could be properly held in this case that the injury here was an accident because it was an accident that the typhoid germs happened to be in the water furnished the plaintiff's employes, and, second, it was an accident that the germ found favorable opportunity for development in the workmen.

A similar ruling was announced by the Supreme Court of Massachusetts in Hood vs. Maryland Casualty Company, 206 Mass. The policy in that case provided indemnity against loss from liability for damages on account of bodily injuries accidentally suffered, similar to the policy under consideration. The employe was a hostler and in the course of his employment he contracted glanders, through negligence of his employer. The court held the insurance company liable because the infection which caused the disease was due to accident.

So also in the case of the Columbia Paper Company vs. the Fidelity & Casualty Company, 104 Mo. Ap., a policy similar to the one now in controversy. The employe contracted a kidney disease by handling infected wool rags, and the court held it was within the terms of the policy, and the insurance company liable.

It is sought to distinguish these cases from the one at bar because it is claimed that in the cases referred to there was an abrasion of the body through which the poison entered the system, but, as stated in the English case, that fact is immaterial because it was a mere fortuitous accident that it came in contact with this particular spot, and where some affliction of our physical frame is in any way induced by accident, we should be on our guard that we are not misled by medical phrases to allow the proper application of the

phrase accident causing the injury, because the injury inflicted by the accident sets up a condition of things which medical men denominate disease.

Under these circumstances, and they seem to be directly in point, I conclude that the injuries referred to in the complaint come within the terms and provisions of this policy, and the demurrer should be overruled.

And afterwards, to-wit, on the 12th day of July, 1915, there was duly filed in said court and cause, an Answer in words and figures as follows, to-wit:

ANSWER.

Comes now the defendant above named and for answer to plaintiff's first cause of action in the complaint on file herein, admits, denies and alleges, as follows, to-wit:

I.

Admits paragraph one and two of said complaint.

II.

Admits that on or about March 20th, 1913, the defendant upon the request of the plaintiff and upon payment by the plaintiff to the defendant of the premium required, duly made, executed and delivered to the plaintiff a policy of insurance, said

policy, being numbered E-91221, entitled Contractor's Employers Liability Policy, by which policy this defendant agreed to indemnify the plaintiff against loss and/or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employess of the plaintiff, by reason of said construction work and business conducted by the plaintiff on plaintiff's premises, adjoining the Government Moorings.

III.

Admits paragraph 4 of said first cause of action.

IV.

Admits that plaintiff furnished water to its employees.

V.

Admits paragraph 6 of said first cause of action, in said complaint.

VI.

Admits that plaintiff immediately upon being served with summons and complaint by Louis Weich, forwarded to the defendant copy of said summons and complaint and called upon defendant to defend said action in the name and on behalf of the plaintiff.

Defendant admits that it refused to defend said action on the ground that said claim did not arise from bodily injuries accidentally suffered and that the policy of insurance referred to in plaintiff's first cause of action did not cover such claims.

Defendant admits that said Louis Weich secured a verdict against plaintiff for the sum of $700.00 and admits that said verdict was settled for $600.00 on or about the 30th day of April, 1914, and admits that said $600.00 was paid by this plaintiff to said Louis Weich.

Defendant admits that said $600.00 was paid between February 1st, and April 30th, 1914, but this defendant denies each and every other allegation, matter and thing contained in paragraph seven of plaintiff's first cause of action, and the whole thereof.

VII.

Defendant denies paragraph eight and nine of said first cause of action, and the whole thereof, and denies every allegation in said first cause of action, except such allegations as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's first cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plain-

tiff was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Oregon, and from the 20th day of March, 1913, to the first day of January, 1914, plaintiff was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings between the Willamette River and the Linnton Road in Multnomah County, Oregon, and in such work employed a large number of men.

II.

That this defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and is engaged in general life, accident and liability insurance and has complied with the laws of Oregon, with reference to foreign insurance companies transacting business in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered to the plaintiff a policy of insurance, Numbered Policy *no.* E-91221 entitled Contractors Employers Liability Policy by which policy the defendant in consideration of a premium paid by the plaintiff agreed to indemnify the plaintiff against loss and/or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an em-

ployee or employees of the plaintiff by reason of the plaintiff's construction of a gas plant near Linnton, Oregon. That said Louis Weich, mentioned in plaintiff's first cause of action, alleges that he contracted typhoid fever by reason of drinking certain contaminated water furnished him by the plaintiff. That this defendant alleges that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the policy mentioned in plaintiff's first cause of action. That said policy does not cover typhoid fever contracted through the drinking of water furnished by the plaintiff. That under said policy of insurance this plaintiff is not entitled to any reimbursement or indemnity by reason of any expense or loss suffered by the plaintiff because of the acts or actions of said Louis Weich.

WHEREFORE defendant prays that plaintiff's first cause of action be dismissed and that plaintiff take nothing by reason thereof and that defendant be awarded its costs and disbursements herein.

For answer to plaintiff's second cause of action, in said complaint on file herein, this defendant admits, denies and alleges as follows, to-wit:

I.

Answering paragraph 1 of said second cause of action, this defendant admits paragraphs 1 and 2 of the first cause of action, said paragraphs being

incorporated in and made a part of said second cause of action.

II.

Answering paragraph 3 of said first cause of action, which said paragraph 3 was and is incorporated in said second cause of action, this defendant admits that on or about March 20th, 1913, the defendant upon the request of the plaintiff and upon payment by the plaintiff to the defendant of the premium required duly made, executed and delivered to the plaintiff a policy of insurance, said policy being numbered E-91221, entitled Contractor's Employer's Liability Policy, by which policy this defendant agreed to indemnify the plaintiff against loss and/or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of said construction work and business conducted by the plaintiff on plaintiff's premises, adjoining the Government Moorings.

III.

Defendant admits paragraph 4 of said first cause of action, which said paragraph 4 of said first cause of action was incorporated in and made a part of said second cause of action.

IV.

Defendant admits that plaintiff furnished water to its employees.

V.

Defendant denies paragraph 8 of said first cause of action, which said paragraph 8 of said first cause of action, was incorporated in and made a part of said second cause of action.

VI.

Defendant admits paragraph 2 of said second cause of action.

VII.

Admits that plaintiff immediately upon being served with summons and complaint of Joseph Duerst, forwarded to the defendant copy of said summons and complaint and called upon the defendant to defend said action in the name and on behalf of the plaintiff.

Defendant admits that it refused to defend said action on the ground that said claim did not arise from bodily injuries accidentally suffered and that the policy of insurance referred to in plaintiff's first cause of action did not cover such claims.

Defendant admits that said action was settled by the payment of the sum of one hundred and fifty

dollars, and admits that plaintiff paid to said Joseph Duerst the sum of one hundred and fifty dollars.

Defendant admits that said $150.00 was paid between the dates of April 1st and August 31st, 1914, but this defendant denies each and every other allegation, matter and thing contained in paragraph 3 of plaintiff's second cause of action, and the whole thereof.

VIII.

Defendant denies paragraph 4 of said second cause of action, and the whole thereof, and denies each and every allegation in said 2nd cause of action and the whole thereof, except such allegation as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's second cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plaintiff was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the 1st day of January, 1914, plaintiff was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings, between the Willamette River and the Linnton Road, in Multnomah County, Oregon, and in such work employed a large number of men.

II.

That this defendant is a corporation duly organized and existing under and by virtue of the laws of Connecticut, and is engaged in general life, accident and liability insurance business in the State of Oregon and has complied with the laws of Oregon, relating to foreign insurance companies transacting business in Oregon.

III.

That on or about March 20th, 1913, defendant made, executed and delivered to plaintiff a policy of insurance numbered E-91221, entitled Contractors Employers Liability Policy by which policy defendant in consideration of a premium paid by plaintiff agreed to indemnify the plaintiff against loss and or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of plaintiff by reason of plaintiff's construction of a gas plant near Linnton, Oregon. That said Joseph Duerst mentioned in plaintiff's second cause of action alleges he contracted typhoid fever by reason of drinking certain contaminated water furnished him by plaintiff. That this defendant alleges that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the policy mentioned in plaintiff's second cause of action. That said policy does not cover typhoid

fever contracted through the drinking of water furnished by the plaintiff. That under said policy of insurance this plaintifff is not entitled to any reimbursements or indemnity by reason of any expense or loss suffered by the plaintiff because of the acts or actions of said Joseph Duerst.

WHEREFORE, defendant prays that plaintiff's second cause of action be dismissed and that plaintiff take nothing by reason thereof and that defendant be awarded its costs and disbursements herein.

For answer to plaintiff's third cause of action, in said complaint contained, this defendant admits, denies and alleges as follows:

I.

Answering paragraph 1 of said third cause of action, this defendant admits paragraphs 1 and 2 of the first cause of action, which said paragraphs 1 and 2 of said first cause of action, are incorporated in and made a part of said third cause of action.

II.

Answering paragraph 3 of said first cause of action, which said paragraph 3 was and is incorporated in said second cause of action, this defendant admits that on or about March 20th, 1912, the defendant upon the request of the plaintiff and upon

payment by the plaintiff to the defendant of the premium required duly made, executed and delivered to the plaintiff a policy of insurance, said policy being numbered E-91221, entitled Contractor's Employer's Liability Policy, by which policy this defendant agreed to indemnify the plaintiff against loss and/or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of said construction work and business conducted by the plaintiff on plaintiff's premises adjoining the Government Moorings.

III.

Defendant admits paragraph 4 of said first cause of action, which said paragraph 4 of said first cause of action was incorporated in and made a part of said third cause of action.

IV.

Defendant admits that plaintiff furnished water to its employees.

V.

Defendant denies paragraph 8 of said first cause of action, which said paragraph 8 of said first cause of action was incorporated in, and made a part of said third cause of action.

VI.

Admits paragraph 2 of said third cause of action.

VII.

Admits that plaintiff immediately upon learning of said case of typhoid fever, notified defendant of said claim being made upon it by said Hastings, and called upon the defendant to indemnify the plaintiff against said claim of said Hastings.

Admits that it refused to indemnify plaintiff by reason of said claim, on the ground that said claim did not arise from bodily injuries, accidentally suffered and that the policy of insurance referred to in plaintiff's third cause of action did not cover such claim.

Defendant admits that said claim was settled by the payment of the sum of one hundred and fifty dollars on or about the 1st day of September, 1914, but this defendant denies each and every other allegation, matter and thing contained in paragraph 3 of plaintiff's third cause of action, and the whole thereof.

VIII.

Defendants denies paragraph 4 of said third cause of action, and the whole thereof, and denies each and every allegation in said third cause of action and the whole thereof, except such allegations as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's third cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plaintiff was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Oregon, and from the 20th day of March, 1913, to the first day of January, 1914, plaintiff was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings between the Willamette River and the Linnton Road in Multnomah County, Oregon, and in such work employed a large number of men.

II.

That this defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and is engaged in general life, accident and liability insurance, in the State of Oregon, and has complied with the laws of Oregon, with reference to foreign insurance companies transacting business in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered to the plaintiff a policy of insurance Numbered Policy No. E-91221,

entitled Contractor's Employer's Liability Policy, by which policy the defendant in consideration of a premium paid by the plaintiff agreed to indemnify the plaintiff against loss and or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of the plaintiff's construction of a gas plant near Linnton, Oregon. That said C. Hastings, mentioned in plaintiff's third cause of action claimed that he contracted typhoid fever by reason of drinking certain contaminated water furnished him by the plaintiff. That this defendant alleges that tyohoid fever is not a bodily injury accidentally suffered, and does not come within the purview of the policy mentioned in plaintiff's third cause of action. That said policy does not cover typhoid fever contracted through the drinking of water furnished by the plaintiff. That under said policy of insurance, this plaintiff is not entitled to any reimbursement or indemnity by reason of any expense or loss suffered by the plaintiff because of the acts or actions of said C. Hastings.

WHEREFORE defendant prays that plaintiff's third cause of action be dismissed and that plaintiff take nothing by reason thereof, and that defendant be awarded its costs and disbursements herein.

For answer to plaintiff's fourth cause of action, in said complaint on file herein, this defendant admits, denies and alleges as follows, to-wit:

I.

Answering paragraph 1 of said fourth cause of action, this defendant admits paragraphs 1 and 2 of the first cause of action, which said paragraphs 1 and 2 of said first cause of action are incorporated in and made a part of said fourth cause of action.

II.

Answering paragraph 3 of said first cause of action, which said paragraph 3 was and is incorporated in, said fourth cause of action, this defendant admits that on or about March 20th, 1913, the defendant upon request of the plaintiff and upon payment by the plaintiff to the defendant of the premium required duly made, executed and delivered to the plaintiff a policy of insurance, said policy being numbered E-91221, entitled Contractor's Employer's Liability Policy, by which policy this defendant agreed to indemnify the plaintiff against loss and/or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of said construction work and business conducted by the plain-

tiff on plaintiff's premises adjoining the Government Moorings.

III.

Defendant admits paragraph 4 of said first cause of action, which said paragraph 4 of said first cause of action was incorporated in and made a part of said fourth cause of action.

IV.

Defendant admits that plaintiff furnished water to its employees.

V.

Defendant denies paragraph 8 of said first cause of action, which said paragraph 8 of said first cause of action was incorporated and made a part of said fourth cause of action.

VI.

Admits paragraph 2 of said fourth cause of action.

VII.

Admits that plaintiff immediately upon learning of said case of typhoid fever, notified defendant of said claim, being made upon it by the said Otto Bush, and that said plaintiff called on defendant to indemnify the plaintiff against said claim of said Bush.

Admits that it refused to indemnify plaintiff by reason of said claim on the ground that said claim did not arise from bodily injuries accidentally suffered and that the policy of insurance referred to in plaintiff's fourth cause of action, did not cover such claim.

Defendant admits that said claim was settled by the payment of the sum one hundred dollars on or about the 1st day of April, 1914, but this defendant denies and every other allegation, matter and thing contained in paragraph 3 of said fourth cause of action, and the whole thereof.

VIII.

Defendant denies paragraph 4 of said fourth cause of action, and the whole thereof, and denies each and every allegation in said fourth cause of action and the whole thereof, except such allegation as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's fourth cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March,

1913, to the first day of January, 1914, plaintiff was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings, between the Willamette River and the Linnton Road in Multnomah County, Oregon, and in such work employed a large number of men.

II.

That this defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and is engaged in general life, accident and liability insurance in the State of Oregon, and has complied with the laws of Oregon, with reference to foreign insurance companies transacting business in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered to the plaintiff, a policy of insurance, Numbered Policy No. E-91221, entitled Contractor's Employer's Liability Policy, by which policy the defendant in consideration of a premium paid by the plaintiff agreed to indemnify the plaintiff against loss and or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of the plaintiff's construction of a gas plant near Linnton, Oregon. That said Otto Bush, mentioned

in plaintiff's fourth cause of action, claimed he contracted typhoid fever by reason of drinking certain contaminated water furnished him by the plaintiff. That this defendant alleges that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the policy mentioned in plaintiff's fourth cause of action. That said policy does not cover typhoid fever contracted through the drinking of water furnished by the plaintiff. That under said policy of insurance this plaintiff is not entitled to any reimbursement or indemnity by reason of any expense or loss suffered by the plaintiff because of the acts or actions of said Otto Bush.

WHEREFORE defendant prays that plaintiff's fourth cause of action be dismissed and that plaintiff take nothing by reason thereof, and that defendant be awarded its costs and disbursements herein.

For answer to plaintiff's fifth cause of action, in said complaint, on file herein, this defendant admits, denies and alleges as follows, to-wit:

I.

Answering paragraph 1 of said fifth cause of action, this defendant admits paragraphs 1 and 2 of the first cause of action, which said paragraphs 1 and 2 said first cause of action are in-

corporated in and made a part of said fifth cause of action.

II.

Answering paragraphs 3 of said first cause of action, which said paragraph 3 was and is incorporated in said fifth cause of action, this defendant admits that on or about March 20th, 1913, the defendant upon the request of the plaintiff and upon payment by the plaintiff to the defendant of the premium required duly made, executed and delivered to the plaintiff a policy of insurance, said policy being numbered E-91221, entitled Contractor's Employer's Liability Policy, by which policy this defendant agreed to indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of said construction work and business conducted by the plaintiff on plaintiff's premises adjoining the Government Moorings.

III.

Defendant admits paragraph 4 of said first cause of action, which said paragraph 4 of said first cause of action was incorporated in and made a part of said fifth cause of action.

IV.

Defendant admits that plaintiff furnished water to its employees.

V.

Defendant denies paragraph 8 of said first cause of action, which said paragraph 8 of said first cause of action, was incorporated in and made a part of said fifth cause of action.

VI.

Admits paragraph 2 of said fifth cause of action.

VII.

Admits that plaintiff immediately upon learning of said case of typhoid fever, notified defendant and immediately upon learning of the claim being made by said Harbick, notified the defendant, and that said plaintiff called on defendant to indemnify the plaintiff against said claim if said Harbick.

Admits that it refused to indemnify plaintiff by reason of said claim on the ground that said claim did not arise from bodily injuries, accidentally suffered and that the policy of insurance referred to in plaintiff's fifth cause of action, did not cover such claim.

Defendant admits that said claim was settled by the payment of the sum of one hundred and twenty-

five dollars on or about March 1st, 1914, but this defendant denies each and every other allegation, matter and thing contained in paragraph 3 of the said fifth cause of action, and the whole thereof.

VIII.

Defendant denies paragraph 4 of said fifth cause of action, and the whole thereof, and denies each and every allegation in said fifth cause of action and the whole thereof, except such allegations as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's fifth cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the first day of January, 1914, plaintiff was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings, between the Willamette River and the Linnton Road in Multnomah County, Oregon, and in such work employed a large number of men.

II.

That this defendant is a corporation duly or-

ganized and existing under and by virtue of the laws of the State of Connecticut and is engaged in general life, accident and liability insurance in the State of Oregon and has complied with the laws of Oregon, with reference to foreign insurance companies transacting business in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered to the plaintiff, a policy of insurance numbered Policy No. E-91221, entitled Contractor's Employer's Liability Policy, by which policy the defendant in consideration of a premium paid by the plaintiff agreed to indemnify the plaintiff against loss and or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of the plaintiff's construction of a gas plant near Linnton, Oregon. That said George Harbick mentioned in plaintiff's fifth cause of action, claimed he contracted typhoid fever by reason of drinking certain contaminated water furnished him by the plaintiff. That this defendant alleges that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the policy mentioned in plaintiff's fifth cause of action. That said policy does not cover typhoid fever contracted through the drinking of water furnished by the

plaintiff. That under said policy of insurance this plaintiff is not entitled to any reimbursement or indemnity by reason of any expense or loss suffered by the plaintiff because of the acts or actions of said George Harbick.

WHEREFORE defendant prays that plaintiff's fifth cause of action be dismissed and that plaintiff take nothing by reason thereof and that defendant be awarded its costs and disbursements herein.

For answer to plaintiff's sixth cause of action, in said complaint on file herein this defendant admits, denies and alleges as follows, to-wit:

I.

Answering paragraph 1 of said sixth cause of action, this defendant admits paragraphs 1 and 2 of the first cause of action, which said paragraphs 1 and 2 of said first cause of action are incorporated in and made a part of said sixth cause of action.

II.

Answering paragraph 3 of said first cause of action, which said paragraph 3 was and is incorporated in said sixth cause of action, this defendant admits that on or about March 20th, 1913, the defendant upon the request of the plaintiff and upon payment by the plaintiff to the defendant of the

premium required, duly made, executed and delivered to the plaintiff a policy of insurance, said policy being numbered E-91221, entitled Contractor's Employers Liability Policy, by which policy, this defendant agreed to indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of said construction work and business conducted by the plaintiff on plaintiff's premises adjoining the Government Moorings.

III.

Defendant admits paragraph 4 of said first cause of action, which said paragraph 4 of said first cause of action was incorporated in and made a part of said sixth cause of action.

IV.

Defendant admits that plaintiff furnished water to its employees.

V.

Defendant denies paragraph 8 of said first cause of action, which said paragraph 8 of said first cause of action, was incorporated in and make a part of said sixth cause of action.

VI.

Admits paragraph 2 of said sixth cause of action.

VII.

Admits that plaintiff immediately upon learning of said case of typhoid fever notified defendant and immediately upon learning of the claim being made by said Kohl, notified the defendant and that said plaintiff called on defendant to indemnify the plaintiff against said claim of said Kohl.

Admits that it refused to indemnify plaintiff by reason of said claim on the ground that said claim did not arise from bodily injuries, accidentally suffered, and that the policy of insurance referred to in plaintiff's sixth cause of action, did not cover such claim.

Defendant admits that said claim was settled by the payment of the one hundred and fifty dollars on or about March 1st, 1914, but this defendant denies each and every other allegation, matter and thing contained in paragraph 3 of said sixth cause of action and the whole thereof.

VIII.

Defendant denies paragraph 4 of said sixth cause of action and the whole thereof, and denies each and every allegation of said sixth cause of action and the whole thereof, except such allegations as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's sixth cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the first day of January, 1914, plaintiff was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings, between the Willamette River and the Linnton Road in Multnomah County, Oregon, and in such work employed a large number of men.

II.

That this defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and is engaged in general life, accident and liability insurance in the State of Oregon and has complied with the laws of Oregon, with reference to foreign insurance companies transacting business in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered to the plaintiff, a policy of insurance numbered Policy No. E-91221, entitled Contractor's Employer's Liability

Policy, by which policy the defendant in consideration of a premium paid by the plaintiff agreed to indemnify the plaintiff against loss and or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of the plaintiff's construction of a gas plant near Linnton, Oregon. That said F. Kohl, mentioned in plaintiff's sixth cause of action, claimed he contracted typhoid fever by reason of drinking certain contaminated water furnished him by the plaintiff. That this defendant alleges that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the policy mentioned in plaintiff's sixth cause of action. That said policy does not cover typhoid fever contracted through the drinking of water furnished by the plaintiff. That under said policy of insurance this plaintiff is not entitled to any reimbursement or indemnity by reason of any expense or loss suffered by the plaintiff because of the acts or actions of said F. Kohl.

WHEREFORE defendant prays that plaintiff's sixth cause of action be dismissed and that plaintiff take nothing by reason thereof, and that defendant be awarded its costs and disbursements herein.

For answer to plaintiff's seventh cause of action in said complaint on file herein, this defendant admits, denies and alleges as follows, to-wit:

I.

Answering paragraph 1 of said seventh cause of action, this defendant admits paragraphs 1 and 2 of the first cause of action, which said paragraphs 1 and 2 of said first cause of action, are incorporated in and made a part of said seventh cause of action.

II.

Answering paragraphs 3 of said first cause of action, which said paragraph 3 was and is incorporated in said seventh cause of action, this defendant admits that on or about March 20th, 1913, the defendant upon the request of the plaintiff and upon payment by the plaintiff to the defendant of the premium required, duly made, executed and delivered to the plaintiff a policy of insurance, said policy being numbered E-91221, entitled Contractor's Employer's Liability Policy, by which policy this defendant agreed to indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of said construction work and business conducted by the plaintiff on plaintiff's premises adjoining the Government Moorings.

III.

Defendant admits paragraph 4 of said first cause

of action, which said paragraph 4 of said first cause of action was incorporated in and made a part of said seventh cause of action.

IV.

Defendant admits that plaintiff furnished water to its employees.

V.

Defendant denies paragraph 8 of said first cause of action, which said paragraph 8 of said first cause of action, was incorporated in and made a part of said seventh cause of action.

VI.

Defendant admits paragraph 2 of said seventh cause of action.

VII.

Admits that plaintiff immediately upon being served with summons and complaint by I. M. Andrus, forwarded to the defendant a copy of said summons and complaint and called upon the defendant to defend said action in the name and on behalf of the plaintiff.

Defendant admits that it refused to defend said action on the ground that said claim did not arise from bodily injuries accidentally suffered and that the policy of insurance referred to in plaintiff's seventh cause of action did not cover such claim.

Defendant admits that said I. M. Andrus secured a verdict against plaintiff for the sum of $5500.00 and admits that said verdict was settled for $1635.00 on or about the 22nd day of March, 1915, and admits that $1635.00 was paid said I. M. Andrus.

Defendant admits that said sum of $1635.00 was paid between February 13th, 1913, and March 22nd, 1915, but this defendant denies each and every other allegation matter and thing contained in paragraph 3 of said seventh cause of action, and the whole thereof.

VIII.

Defendant denies paragraph 4 of said seventh cause of action and the whole thereof, and denies each and every allegation of said seventh cause of action and the whole thereof, except such allegations as are herein specifically admitted.

For a first, separate and further answer and defense to plaintiff's seventh cause of action, this defendant alleges:

I.

That during all the times herein mentioned, plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, and from the 20th day of March, 1913, to the first day of January, 1914, was engaged in the construction of a gas plant and

works on its property adjoining the Government Moorings, between the Willamette River and the Linnton Road in Multnomah County, Oregon, and in such work, employed a large number of men.

II.

That this defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut and is engaged in general life, accident and liability insurance in the State of Oregon and has complied with the laws of Oregon, with reference to foreign insurance companies transacting business in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered to the plaintiff a policy of insurance numbered, Policy No.-E91211, entitled Contractor's Employer's Liability Policy, by which policy the defendant in consideration of a premium paid by the plaintiff agreed to indemnify the plaintiff against loss and or expense arising or resulting in claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of the plaintiff's construction of a gas plant near Linnton, Oregon. That said I. M. Andrus mentioned in plaintiff's seventh cause of action, claimed he contracted typhoid fever by reason of

drinking certain contaminated water furnished him by the plaintiff. That this defendant alleges that typhoid fever is not a bodily injury accidentally suffered and does not comes within the purview of the policy mentioned in plaintiff's seventh cause of action. That said policy does not cover typhoid fever contracted through the drinking of water furnished by the plaintiff. That under said policy of insurance this plaintiff is not entitled to any reimbursement or indemnity by reason of any expense or loss suffered by the plaintiff, because of the acts or actions of said I. M. Andrus.

Wherefore, defendant having fully answered plaintiff's seventh cause of action, and having fully answered plaintiff's complaint, prays that same be dismissed and that plaintiff take nothing by reason thereof, and that defendant be awarded its costs and disbursements herein.

SENN, EKWALL AND RECKEN,
Attorneys for Defendant.

State of Oregon, County of Multnomah.

I, W. E. Pearson, being first duly sworn, depose and say that I am one of the Managing Agents of the defendant in the above entitled action; and that the foregoing Answer is true as I verily believe.

W. E. PEARSON,

Subscribed and sworn to before me this 12th day of July, 1915.

(Seal) LOUIS A. RECKEN,
Notary Public for the State of Oregon.

State of Oregon, County of Multnomah, ss.

Due and legal service of the within Answer is hereby accepted in Multnomah County, Oregon, this 12th day of July, 1915.

H. W. STRONG,
One of the Attorneys for Plaintiff.

Filed July 12, 1915.

G. H. MARSH, Clerk.

And Afterwards, to wit, on the 4th day of August, 1915, there was duly filed in said court, and cause, a Reply, in words and figures as follows, to wit:

REPLY.

Comes now the plaintiff and for its reply to defendant's answer filed herein denies each and every allegation contained in said answer and the whole thereof that is inconsistent with the allegations of the complaint.

Wherefore plaintiff demands judgment as prayed for in the complaint.

JOHN A. LAING, H. W. STRONG
AND JOHN F. LOGAN,
Attorneys for Plaintiff,
1208 Spalding Building, Portland, Oregon.

State of Oregon, County of Multnomah, ss.

I, Geo. F. Nevins, being first duly sworn, depose and say:

That I am Secretary of Portland Gas & Coke Company, a corporation, plaintiff in the foregoing action; that I have read the foregoing reply, know the contents thereof, and that the same is true as I verily believe.

GEO. F. NEVINS,

Subscribed and sworn to before me this 4th day of August, 1915.

H. E. MANGHUM,

(Seal) Notary Public for Oregon.

My commission expires June 1st, 1915.

Due service of the foregoing reply by certified copy thereof is hereby admitted at Portland, Ore., this 4th day of August, 1915.

F. S. SENN,

Attorney for Defendant.

Filed August 4, 1915.

G. H. MARSH, Clerk.

And Afterwards, to wit, on the 4th day of August, 1915, there was duly filed in said court, and cause, a Stipulation to try cause without the intervention of a jury, in words and figures as follows, to wit:

STIPULATION WAIVING JURY.

It is hereby stipulated and agreed, by and between the above entitled parties, through their respective attorneys, that the above case and cause may be tried before the court without a jury and

that the right of trial by jury is hereby expressly waived.

JOHN A. LAING AND H. W. STRONG,
Attorneys for Plaintiff.
F. S. SENN,
Of Attorneys for Defendant.

Filed August 4, 1915.
G. H. MARSH, Clerk.

And Afterwards, to wit, on the 10th day of August, 1915, there was duly filed in said court, and cause, Findings of Fact and Conclusions of Law, in words and figures as follows, to wit:

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on duly and regularly for trial in open court upon the issues raised by the pleadings herein before the court without a jury, a jury having been expressly waived by written stipulation and consent of the parties duly filed in this cause, the plaintiff appeared and was represented in court by John A. Laing and H. W. Strong, its attorneys, and the defendant by Senn, Ekwall & Recken, its attorneys; whereupon the court duly heard the testimony of certain witnesses and heard the evidence presented by the plaintiff, the defendant producing no witnesses or evidence, and the court being fully advised in the premises, now

makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT.

The court finds generally for the plaintiff and against the defendant upon each of the seven causes of action set out in plaintiff's complaint.

CONCLUSIONS OF LAW.

The court concludes that plaintiff is entitled to judgment against the defendant upon the first cause of action for the sum of $1680.88 with interest thereon at the rate of 6% per annum from April 30th, 1914; upon the second cause of action for the sum of $262.30, with interest thereon at 6% per annum from August 31st, 1914; upon the third cause of action for the sum of $200.00 with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of $125.00 with interest thereon at the rate of 6% per annum from April 1st, 1914; upon the fifth cause of action for the sum of $150.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of $175.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of $2,785.94 with interest thereon at the rate of 6% per annum from March 22nd,

1915; and for its costs and disbursements incurred herein taxed at the sum of $.....; and that execution issue therefor.

Dated at Portland, Oregon, August 10th, 1915.

R. S. BEAN, Judge.

Filed August 10, 1915.

G. H. MARSH, Clerk.

And Afterwards, to wit, on Tuesday, the 10th day of August, 1915, the same being the 32nd Judicial day of the regular July term of said court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

JUDGMENT.

This cause coming on regularly for trial before the court without a jury, a jury having been expressly waived by the parties hereto by written stipulation duly filed with the clerk of this court, the plaintiff appearing by its attorneys John A. Laing and H. W. Strong, and the defendant by its attorneys Senn, Ekwall & Recken, and the court having heard and considered the testimony and evidence herein and having made and filed its findings of fact and conclusions of law herein and being fully advised in the premises, it is therefore

ORDERED AND ADJUDGED that the plaintiff have and recover judgment against the defendant

upon the first cause of action herein for the sum of $1680.88 with interest thereon at the rate of 6% per annum from April 30th, 1914; upon the second cause of action for the sum of $262.30 with interest thereon at the rate of 6% per annum from August 31st, 1914; upon the third cause of action for the sum of $200.00 with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of $125.00 with interest thereon at the rate of 6% per annum from April 1st, 1914; upon the fifth cause of action for the sum of $150.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of $175.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of $2,785.94 with interest thereon at the rate of 6% per annum from March 22nd, 1915; and for its costs and disbursements incurred herein taxed at the sum of $.....; and that execution issue therefor.

Dated at Portland, Oregon, August 10, 1915.

R. S. BEAN, Judge.

Filed August 10, 1915.

G. H. MARSH, Clerk.

And Afterwards, to wit, on the 17th day of August, 1915, there was duly filed in said court, and cause, a Bill of Exceptions, in words and figures as follows, to wit:

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on the ..... day of ....., 1915, there was duly filed in the District Court of the United States, for the District of Oregon, a Transcript on Removal, containing therein the following complaint in words and figures as follows, to wit:

In the Circuit Court of the State of Oregon for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

COMPLAINT

Comes now the plaintiff and for its first cause of action against the defendant, complains and alleges:

I.

That plaintiff is a corporation organized and existing under the laws of the State of Oregon, and from the 20th day of March, 1913, to the first day of January, 1914, was engaged in the construction of a gas plant and works on its property adjoining the Government Moorings, between the

Willamette River and the Linnton Road in Multnomah County, Oregon, and employed a large number of men in such work.

II.

That the defendant is a corporation organized and existing under the laws of Connecticut, is engaged in general life, liability and accident insurance and has complied with the laws of Oregon with reference to foreign insurance companies transacting business within the State of Oregon.

III.

That on or about March 20th, 1913, the defendant, upon the request of the plaintiff and upon the payment by plaintiff to defendant of the premiums required, duly made, executed and delivered to plaintiff policy of insurance numbered "Policy No. E-91221" entitled "Contractors Employer's Liability Policy," by which policy the defendant, in consideration of the premium provided in the policy, promised and agreed to indemnify the plaintiff against loss and or expense arising or resulting from the claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of the said construction work and business conducted by the plaintiff on said premises adjoining the Government Moorings, whether said

injuries are accidentally suffered or alleged to have been suffered at the location or elsewhere, and to defend at its own cost any and all actions brought against the plaintiff to enforce a claim for damages covered by said policy; provided that the plaintiff forthwith forward to the defendant every summons or other process as soon as the same shall have been served upon it; that in said policy it was expressly provided that, subject to all agreements and conditions expressed therein, claims were covered whenever arising on account of accidents or alleged accidents occurring during the time said policy was in force.

IV.

That the term of said policy was for a period of six months, beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and that by agreements duly made and endorsed on said policy the said policy period was extended from time to time to noon of January 1st, 1914, and that said policy was in full force and effect all such time.

V.

That in carrying on said construction work on said premises the plaintiff had water carried from certain sources of water supply in that vicinity for use by the employes of the plaintiff for drinking purposes in said construction work on said

premises; that there was no drinking water on said premises and the carrying and furnishing of drinking water to its employes was an incident in, and a part of, the construction work carried on by said plaintiff on said premises.

VI.

That during a portion of the months of August and September, 1913, and while said policy of insurance was in full force and effect, the plaintiff had in its employ on said construction work on said premises, among other an employe by the name of Louis Weich, who was working for the plaintiff as a common laborer, excavating for concrete foundations, being one of the classified descriptions of business covered by said policy of insurance; that while so employed said Weich drank the water furnished him by the plaintiff; that on or about the 16th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that on or about the 15th day of January, 1914, commenced an action against the plaintiff herein, in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that the water furnished him by the plaintiff herein was unwholesome and unfit for drinking purposes, and that the plaintiff herein carelessly and negligently failed to deliver to him wholesome drinking water but instead thereof delivered to him unwholesome water which was then and there impregnated with

typhoid germs and wholly unfit for drinking purposes, and that the plaintiff herein well knew, or by the exercise of reasonable precaution should have known, that the water delivered to him was unwholesome and was impregnated with typhoid germs and was unfit for drinking purposes, and that by reason of his drinking such unwholesome water he contracted typhoid fever, without any fault on his part, and then and there was rendered sick and was on the 16th day of September, 1913, confined to his bed by reason of typhoid fever and was compelled to remain in bed for a long period, to-wit: three months, and was made sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish, and his mental system was permanently shattered and he was seriously and permanently injured in that his heart was inflamed and the valves and muscles thereof were wholly and permanently incapacitated from performing their normal functions and the lower limbs of Weich were benumbed and paralyzed and he alleged his damages at the sum of twenty thousand dollars ($20,000.00) and demanded judgment against plaintiff herein for said sum.

VII.

That plaintiff immediately upon being served with summons and complaint in said action, forwarded to the defendant the summons and copy of complaint and all processes served upon it in said

action, and called upon the defendant to defend such action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and or expense arising or resulting from said claim of Louis Weich, as it had agreed to do under said policy of insurance, but that the defendant refused to defend said action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally, and that therefor said policy did not cover such claim; that the plaintiff herein thereupon employed attorneys and incurred expense in the defense of said action; that it filed answer denying liability and put said Weich upon proof of all the allegations of said complaint, that said case was duly and regularly heard and tried by a jury duly empanelled in said court and cause and that said trial resulted in a verdict in favor of said Louis Weich and against the plaintiff herein in the sum of $700.00 and his costs and disbursements; that thereafter plaintiff herein settled and compromised said judgment by paying to said Louis Weich in full settlement and compromise of said claim and said judgment the sum of $600.00 on or about the 30th day of April, 1914; that the expense reasonably incurred by the plaintiff herein in the defense and settlement of said action and the actual loss and expense sustained and paid in money by plaintiff herein arising or resulting from said claim upon the plaintiff, including said sum paid to said Louis Weich,

amounted to the sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) and is itemized as follows:

Filing fee, less refund	$ 2.90
Automobile hire	21.38
Attorney's and claim agent's fees	588.00
Reporter's fees	232.90
Witness fees	75.70
Doctor's fees, (expert testimony)	160.00
Sum paid in compromise settlement	600.00
	$1680.88

That said sums were paid by the plaintiff between the dates of February 1st and April 30th, 1914, and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) together with interest thereon at the rate of six percent per annum from the 30th day of April, 1914, until paid, no part of which has been paid.

VIII.

That plaintiff has complied with all the conditions named in said policy on its part to be performed as conditions precedent to its right to bring this action insofar as said conditions could be complied with by it, in view of defendant's

denial of liability and its refusal to defend said claim or to live up to its obligations under said policy, and that the above claim does not fall within any of the excepted claims mentioned in said policy and is within the limits of liability fixed by said policy and is a claim covered by said policy.

IX.

That the sum of one hundred sixty-eight dollars ($168.00) is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a second cause of action against the defendant complains and alleges:—

I.

Plaintiff incorporates in this second cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, the plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of Joseph Duerst, who was working for the plaintiff as a common laborer at pile-driving, being one of the classified descriptions of business covered by said

policy of insurance, and that while so employed said Duerst drank the water furnished to him by the plaintiff, and that on or about the 30th day of September, 1913, he quit the employ of plaintiff on account of having contracted typhoid fever, and that on the 9th day of April, 1914, commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that between the first day of August, 1913, and the 30th day of September, 1913, he was employed by the plaintiff herein in and about the construction of said gas plant and factory, and that during all of said time, pursuant to his said employment, plaintiff herein undertook to deliver to him unwholesome water for drinking purposes while he was engaged in said work, and that the plaintiff herein in utter disregard to its duty and obligation to furnish him with wholesome water, carelessly and negligently and without due consideration of his health, furnished and delivered to him for drinking water which was then and there impure, unwholesome, impregnated with disease germs and with typhoid fever germs and wholly unfit for drinking purposes and that the plaintiff well knew, or by the exercise of reasonable precaution should have known, that the water so delivered was impure and unwholesome and impregnated with disease germs and with typhoid germs and wholly unfit for drinking purposes; that he used said water so furnished by the plaintiff herein, and by reason of drinking

said water contracted typhoid fever and was thereby rendered sick and ill and was, on the said 30th day of September, 1913, confined to his bed and by reason of said illness and for a period of three months thereafter was sick, ill and incapacitated from said disease and compelled to remain in bed under the care of doctors and nurses and was disabled and his vitality and physical depleted to a considerable extent and that as a result of drinking said water and of contracting said disease he contracted psoriases, and that his body and face have been as a result of the alleged negligence and carelessness of the plaintiff herein affected, blotched, discolored, disfigured and broken out in inflamed spots and sores and that he has become permanently disabled and unable to perform manual or other labor, to his damage in the sum of twenty thousand ($20,000.00) dollars, and that he has been compelled to expend one hundred twenty-seven dollars ($127.00) for hospital bills and seventy-five dollars ($75.00) for doctor bills and he demanded judgment against the plaintiff herein for said sums.

III.

That the plaintiff herein immediately upon being served with summons and complaint in said action, forwarded to the defendant the summons and copy of complaint and all processes served upon it, in said action and called upon the defendant to defend such action in the name and on behalf of the plain-

tiff herein and demanded that the defendant indemnify the plaintiff against all loss and or expense arising or resulting from said claim of Joseph Duerst as it had agreed to do under said policy of insurance, but that the defendant refused to defend said action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally and that therefore said policy did not cover said claim; that the plaintiff herein thereupon employed attorneys and incurred expense in the defense of such action that it filed an answer denying all liability and that after said case was at issue the plaintiff herein settled and compromised said claim and said action by paying to said Joseph Duerst in full settlement and compromise of his said claim the sum of one hundred fifty dollars ($150.00) on or about the 31st day of August, 1914; that the expense reasonably incurred by the plaintiff herein in the defense and settlement and compromise of said action and the loss and expense sustained and paid in money by the plaintiff herein arising or resulting from said claim upon it, including said sum paid to Joseph Duerst amounted to the sum of two hundred sixty-two dollars and thirty cents ($262.30) and is itemized as follows:

Settlement and compromise with Duerst	$150.00
Clerk's fees, less refund	.95
Doctor's fees in examination	15.00
Attorney's and claim agent's fees	96.35
	$262.30

That said sums were paid between the dates of April 1st and August 31st, 1914, and that there is now due and owing to the plaintiff from the defendant said sum of two hundred sixty-two dollars and thirty cents ($262.30) together with interest thereon at the rate of six percent per annum from the 31st day of August, 1914, no part of which has been paid.

IV.

That the sum of twenty-six dollars, $26.00, is a reasonable sum for the court to allow as attorney's fees on this cause of action.

Plaintiff for a third cause of action against the defendant's complains and alleges:—

I.

Plaintiff incorporates in this third cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during the months of July and August, and the first part of September, 1913, while said policy of insurance was in full force and effect the plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of C. Hastings, who was working for the

plaintiff as a common *labor* as stock and time-keeper, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Hastings drank the water furnished him by the plaintiff, and that on or about the 10th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein, in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Hastings that the water furnished him for drinking purposes by the plaintiff herein was impure, and unwholesome and impregnated with typhoid germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 10th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish, and that his system was permanently

shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff, unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Hastings, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Hastings, but that the defendant denied all liability for said claim and refused to *having* anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred fifty dollars ($150.00), which sum was paid unto said Hastings on or about the first day of September, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon plaintiff amounted to the sum of fifty dollars ($50.00) in addition to said sum of one hundred fifty dollars and that there is now due and owing to the plaintiff from defendant on account of said

claim said sum of two hundred dollars, together with interest thereon at the rate of six per cent per annum from December 1st, 1914.

IV.

That the sum of twenty dollars is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a fourth cause of action against the defendant complains and alleges:—

I.

Plaintiff incorporates in this fourth cause of action by reference thereto and makes a part hereof, paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of Otto Bush, who was working for the plaintiff as a carpenter, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Bush drank the water furnished him by the plaintiff and that on

or about the 8th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Bush that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 8th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim made upon it by said Bush, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Bush, but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred dollars, which sum was paid unto said Bush on or about the first day of April, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon plaintiff amounted to the sum of twenty-five dollars ($25.00) in addition to said sum of one hundred dollars and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of one hundred twenty-five dollars together with interest thereon at the rate of six per cent. per annum from April 1st, 1914.

IV.

That the sum of twelve dollars and fifty cents

is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a fifth cause of action against the defendant, complains and alleges:—

I.

Plaintiff incorporates in this fifth cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of George Harbick, who was working for the plaintiff as a common laborer in the insulation of electrical equipment, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Harbick drank the water furnished him by the plaintiff and that on or about the 11th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein in the hands of attorneys for action and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein

and it was claimed by said Harbick that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff herein knew or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 11th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Harbick and called upon the defendant to indemnify the plaintiff against said claim and all loss

and expense arising or resulting or that might arise or result from said claim of said Harbick, but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred twenty-five dollars, which sum was paid unto said Harbick on or about the first day of March, 1914, in full settlement of said claim, that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herin arising or resulting from said claim upon the plaintiff amounted to the sum of twenty-five dollars ($25) in addition to said sum of one hundred twenty-five dollars and that there is now due and owing to the plaintiff from defendant on account of said claim the sum of one hundred and fifty dollars together with interest thereon at the rate of six per cent. per annum from March 1st, 1914.

IV.

That the sum of fifteen dollars is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a sixth cause of action against the defendant complains and alleges:—

I.

Plaintiff incorporates in his sixth cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of F. Kohl, who was working for the plaintiff as a common laborer engaged in road making, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Kohl drank the water furnished him by the plaintiff, and that on or about the 11th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Kohl that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff knew, or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and im-

pregnated with typhoid germs and wholly unfit for drinking purposes, and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff; that he came down sick on or about the 11th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain suffering and mental anguish and that his sytem was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Kohl, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Kohl, but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to

avoid litigation settled and compromised said claim for the sum of one hundred fifty dollars, which sum was paid unto said Kohl on or about the 1st day of March, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon the plaintiff amounted to the sum of twenty-five dollars in addition to said sum of one hundred fifty dollars and that there is now due and owing to the plaintiff from defendant on account of said claim, the sum of one hundred seventy-five dollars, together with interest thereon at the rate of six per cent. per annum from March 1st, 1915.

IV.

That the sum of seventeen dollars and fifty cents is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a seventh cause of action against the defendant complains and alleges:—

I.

Plaintiff incorporates in this seventh cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of I. M. Andrus, who was working for the plaintiff as a millwright in erecting the machinery for the briquetting plant, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed as such millwright said I. M. Andrus drank the water furnished him by the plaintiff and that on or about the 7th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever and that on or about the 13th day of February, 1914, he commenced an action against the plaintiff herein, in the Circuit Court of the State of Oregon for Multnomah County, in which he alleged that the water furnished him by the plaintiff herein was unwholesome and unfit for drinking purposes ans that the plaintiff herein carelessly and negligently failed to deliver to him wholesome drinking water but instead thereof delivered to him unwholesome and impure water which was then and there impregnated with typhoid germs and wholly unfit for drinking purposes and that the plaintiff herein knew, or by the exercise of reasonable care and caution should have known that the water delivered to him was unwholesome and was impregnated with

typhoid germs and was unfit for drinking purposes; that by reason of his drinking such unwholesome water he contracted typhoid fever without any fault on his part and was then and there rendered sick and was on the said 11th day of September, 1913, confined to his bed by reason of typhoid fever and was compelled to remain in bed and in the hospital for eleven and one-half weeks and that by reason of and as a direct and proximate result of said careless and negligent act on the part of the plaintiff herein in furnishing said impure and unwholesome water he suffered great pain and mental anguish, suffered from *deliriu,* high fever and unconsciousness and that his brain, spinal cord, nerves and nervous system generally were poisoned and inflamed; that he suffered paralysis of certain muscles of his arms and legs and that he had toe drop in his left foot and an incomplete wrist drop in his right hand and was numb to pin prick over part of the back of his right hand and forearm and over the front of his left leg and ankle and that he was permanently injured and incapacitated from performing any work whatsoever; that he alleged his damages at the sum of twenty-five thousand dollars, with three hundred forty-seven dollars special damages for hospital and doctor fees and demanded judgment against the plaintiff herein for said sum.

III.

That plaintiff immediately upon being served with summons and complaint in said action for-

warded to the defendant a copy of said summons and complaint and all processes served upon it in said action, and called upon the defendant to defend said action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and or expense arising or resulting from said claim of I. M. Andrus, as it had agreed to do under said policy of insurance; but that the defendant refused to defend such action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally and that therefore said policy did not cover said claim; that the plaintiff thereupon employed attorneys and incurred expense in the defense of said action; that it filed answer denying liability and put said Andrus upon proof of all the allegations of said complaint; that said case was duly and regularly heard and tried by a jury duly empanelled in said court and cause and that said trial resulted in a verdict in favor of said Andrus and against the plaintiff herein in the sum of fifty-five hundred dollars and his costs and disbursements taxed at sixty-four dollars and ninety-five cents that thereafter plaintiff herein appealed said case to the Supreme Court of the State of Oregon and while said appeal was pending a compromise settlement was made and effected between the plaintiff herein and said I. M. Andrus in which said judgment and claim of said Andrus against the plaintiff herein was compromised and settled for the sum of sixteen hundred thirty-five dollars on or about the 22nd day of

March, 1915; that the expense reasonably incurred by the plaintiff herein in the defense of said action and in appeal to the Supreme Court and in the settlement thereof and the actual loss and expense sustained and paid in money by the plaintiff herein arising and resulting from said claim upon the plaintiff herein by said I. M. Andrus amounted to the sum of twenty-seven hundred eighty-five dollars and ninety-four cents and is itemized as follows:

Fees in Circuit Court	$ 9.15
Witness fees and expert testimony	90.00
Reporter's fees	150.00
Automobile expense	1.75
Appeal bond	27.50
Filing fee in Supreme Court and copy of transcript	28.48
Printed abstract and briefs in Supreme Court	82.16
Attorney's and Claim Agent's fees	761.20
Amount paid in compromise settlement	1635.00
	$2785.94

That said sums were paid by the plaintiff herein between the dates of February 13th, 1913, and March 22nd, 1915, and that there is now due and owing to the plaintiff herein from the defendant on account of said claim said sum of twenty-seven hundred eighty-five dollars and ninety-four cents, together with interest thereon at the rate of six per cent. per annum

from the 22nd day of March, 1915, until paid, no part of which has been paid.

IV.

That the sum of two hundred seventy-eight dollars and sixty cents is a reasonable sum for the court to allow as attorney's fees in this seventh cause of action.

WHEREFORE, plaintiff demands judgment against the defendant herein on its first cause of action for the sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) with interest thereon at the rate of six per cent. per annum from April 30th, 1914, together with the sum of one hundred sixty-eight dollars ($168.00) attorney's fees; for the sum of two hundred sixty-two dollars and thirty cents ($262.30) with interest thereon at the rate of six per cent. per annum from the 31st day of August, 1914, together with the sum of twenty-six dollars ($26.00) attorney's fees in the second cause of action; for the sum of two hundred dollars ($200.00) with interest thereon at the rate of six per cent. per annum from December 1st, 1914, together with the sum of twenty dollars ($20.00) attorney's fees, in the third cause of action; for the sum of one hundred twenty-five ($125.00) with interest thereon at the rate of six per cent. per annum from April 1st, 1914, together with the sum of twelve dollars and fifty cents ($12.50) attorney's fees in the fourth cause of action; for the sum of one hundred fifty dollars

($150.00) with interest thereon at the rate of six per cent. per annum from March 1st, 1914, together with the sum of fifteen dollars ($15.00) attorney's fees in the fifth cause of action; for the sum of one hundred seventy-five dollars ($175.00) with interest thereon at the rate of six per cent. per annum from March 1st, 1914, together with seventeen dollars and fifty cents attorney's fees in the sixth cause of action and for the sum of twenty-seven hundred eighty-five dollars and ninety-four cents ($2785.94) with interest thereon at the rate of six per cent. per annum from March 22nd, 1915, together with two hundred seventy-eight dollars and sixty cents attorney's fees in the seventh cause of action and for plaintiff's costs and disbursement incurred herein.

JOHN A. LAING,
JOHN F. LOGAN,
H. W. STRONG,
Attorneys for Plaintiff.

That afterwards this defendant filed a demurrer to said complaint of the plaintiff, said demurrer being in words and figures as follows, to-wit:—

In the District Court of the United States for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant,

Comes now the defendant in the above entitled action and demurs to the complaint of the plaintiff herein, for the reason that the same does not state facts sufficient to constitute a cause of action against the defendant.

SENN-EKWALL & RECKEN,
Attorneys for Defendant.

I, F. S. Senn, one of the attorneys for the defendant hereby certify that the foregoing demurrer is made in good faith, and is not made for the purpose of hindering or delaying the trial of the above entitled action, and I believe that the point raised by said demurrer is well taken.

F. S. SENN,

That afterwards on to-wit, the 21st day of June, 1915, the court made an order overruling said demurrer, said order being as follows, to-wit:—

In the District Court of the United States for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant,

Portland, Oregon, Monday, June 21st, 1915.

R. S. BEAN, D. J., (ORAL)

The case of the Portland Gas and Coke Company vs. the Aetna Life Insurance Company is an action on an indemnity policy by which the Company agreed to indemnify the plaintiff against loss and (or) expense arising or resulting from claim upon the assured for damages on account of bodily injuries and (or) death accidentally suffered by an employe.

Certain employes of the plaintiff company contracted typhoid fever from water furnished for their use by the plaintiff. They brought actions against the plaintiff company and recovered damages on account thereof, and the question for decision in this case is whether that constitutes a bodily injury acci-

dentally received or suffered within the meaning of this policy.

It will be observed that the language of this policy is exceedingly broad. It differs from many indemnity policies in that liability is not limited to injuries received from external violence nor to accidents which result in producing visible external marks or injuries, or evidence of violence, but it is a broad indemnity against injuries resulting from accidental causes.

Now, the English Workman's Compensation Act of 1897 provided for compensation to workmen for personal injury by accident arising in the course of their employment. While a workman was engaged in sorting wool a bacillus passed from the wool to his eye afflicting him with anthrax from which he died. On appeal to the Privy Council, it was held that the injury was due to an accident within the meaning of this law, because first it was an accident that the baccillus happened to be in the wool; second, it was an accident that it settled on the workman in a delicate or tender spot, and third, it was an accident that the poison found its way into the workman's system and caused his death. And therefore the court held that the case came within the Compensation Act. On the same reasoning it could be properly held in this case that the injury here was an accident because it was an accident that the typhoid germs happened to be in the water furnished the plaintiff's employees,

and second, it was an accident that the germ found favorable opportunity for development in the workmen.

A similar ruling was announced by the Supreme Court of Massachusetts in Hood vs. Maryland Casualty Company, 206 Mass. The policy in that case provided indemnity against loss from liability for damages on account of bodily injuries accidentally suffered, similar to the policy under consideration. The employe was a hostler and in the course of his employment he contracted glanders, through negligence of his employer. The court held the insurance company liable because the infection which caused the disease was due to accident.

So also in the case of the Columbia Paper Company vs. the Fidelity & Casualty Company, 104 Mo. Ap., a policy similar to the one now in controversy. The employe contracted a kidney disease by handling infected wool rags, and the court held it was within the terms of the policy, and the insurance company liable.

It is sought to distinguish these cases from the one at bar because it is claimed that in the cases referred to there was an abrasion of the body through which the poison entered the system, but, as stated in the English cases, that fact is immaterial because it was a mere fortuitous accident that it came in contact with this particular spot, and where some affliction of our physical frame is in

any way induced by accident, we should be on our guard that we are not misled by medical phrases to allow the proper application of the phrase accident causing the injury, because the injury inflicted by the accident sets up a condition of things which medical men denominate disease.

Under these circumstances, and they seem to be directly in point, I conclude that the injuries referred to in the complaint come within the terms and provisions of this policy, and the demurrer should be overruled."

That this defendant through its attorney objected to the ruling of the court in over-ruling said demurrer and an exception was duly allowed this defendant.

Exception No. 2.

That on, to-wit, the 4th day of August, 1915, this cause came on for trial before the Hon. R. S. Bean, District Judge, and the following proceedings were had and the following testimony was introduced by the plaintiff.

In the District Court of the United Statse for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
Plaintiff.

vs.

AETNA LIFE INSURANCE COMPANY,
Defendant.

Portland, Oregon, August 4, 1915, 2 P. M.

John A. Laing, and H. W. Strong, for Plaintiffs.
F. S. Senn, for defense.
R. S. Bean, District Judge.
C. W. Platt,
John A. Laing.

Mr. LAING: We would like to stipulate that this case shall be tried without a jury—before the court.

COURT: There is a federal statute covering that matter and it will be necessary for you to file a written stipulation.

Mr. LAING: Very well, we will file a written stipulation. It is also agreed that this contract with the riders attached represent this contract of insurance that is sued upon here, and we desire to offer it in evidence as Plaintiff's Exhibit A.

Insurance Contract marked Plaintiff's Exhibit A.

Mr. LAING: It is stipulated also that the sums actually paid to the men who claim damages against the Portland Gas and Coke Company as set forth in causes of action 1 to 7 inclusive, were paid in reasonable settlement of those claims and that the defendant waives any question as to the amount of those settlements, or the provision in the policy forbidding our making settlement without their consent, in view of the fact that they had previously denied liability under the contract or policy.

C. W. PLATT, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

(Testimony of C. W. Platt.)

Direct Examination.

(Questions by Mr. LAING.)

Mr. Platt, you are the Assistant Treasurer of the Portland Gas and Coke Company, the plaintiff in this case?

A. I am.

Q. In such capacity you have active charge of the accounting department of that company, and charge of the matter of disbursing moneys for various purposes?

A. I have.

Q. These disbursements are made under your active supervision? and within your knowledge, are they not?

A. They are.

Q. This action, Mr. Platt, relates to various sums expended by the Portland Gas and Coke Company in defending various claims against it by its employes, and an attempt is being made to recover the amounts so expended from the Aetna Life Insurance Company. The first cause of action deals with the expense of a claim of Louis Weich against the Gas Company. I would like to ask you if you have with you a statement of the moneys expended by the Gas Company in disposing of that claim?

A. I have.

Q. Will you kindly state the amounts expended and the purposes for which they were expended in connection with the defense of that claim?

(Testimony of C. W. Platt.)

A. The total sum of $1680.88: Filing fees, less refund that was made, $2.90.

Q. That is filing fees where?

A. Filing fees with the Circuit Court.

Q. That is the defendant's filing fees in that action?

A. Yes sir. Automobile hire. That was in connection with getting sufficient testimony to defend the suit, $21.38. Attorneys and claim agents fees, $588.00. Fees to reporters in the court $232.90. Witness fees $75.70. Expert testimony on the part of physicians $160.00. And the sum of $600.00 in settlement of the claim to the plaintiff.

Q. These sums, amounting to $1680.88 were all actually expended by the Portland Gas and Coke Company in defending claim of Louis Weich as set forth in the plaintiff's first cause of action in this complaint?

A. Yes sir.

Q. Referring to the plaintiff's second cause of action dealing with the claim of Joseph Duerst, I will ask you if you have a record of the expenditures made by the Gas Company in defending that claim against it.

A. Yes, sir.

Q. Kindly state what those expenses were, and for what purposes they were incurred.

A. We paid for court fees, $.95; doctor's examination, $15.00; attorney's and claim agent's fees,

(Testimony of C. W. Platt.)

$96.35; the sum of $150 was paid to Mr. Duerst in settlement.

Q. Making the total expenditures—

A. Making total expenditures, $262.30.

Q. And those items were all expended by the Gas Company in connection with that claim?

A. Yes, sir.

Q. Referring now to plaintiff's third cause of action, dealing with the claim against it of one C. Hastings, I will ask you if you have a statement or if you know the amount that the plaintiff in this action expended in defending the claim of C. Hastings and various items of that expense?

A. I have information on that showing that $200.00 was expended of which $150.00 was paid to Mr. Hastings and $50.00 was paid to the claim agent to settle the claim.

Q. Those expenses were actually incurred by the Portland Gas and Coke Company in defending that claim?

A. Yes, sir.

Q. Referring now to the claim of Otto Bush against the Portland Gas and Coke Company, plaintiff's fourth cause of action, do you know how much money was expended by the Gas Company in defense of that claim, and for what purposes it was spent?

A. We paid Mr. Bush $100.00 and the claim agent's expenses in settlement was $25, making $125.00.

(Testimony of C. W. Platt.)

Q. That sum was actually expended by the Gas Company in defending that claim?

A. Yes, sir.

Q. Refferring now to the plaintiff's fifth cause of action, dealing with the claim of George Harbick against the Gas Company, do you know the amount expended by the plaintiff in this action in defense of the Harbick claim?

A. Yes, sir.

Q. Kindly state that.

A. $150, of which Mr. Harbick received $125.00, and the claim agent's charge for settling it was $25.00.

Q. And that sum was expended by the Portland Gas and Coke Company?

A. Yes, sir.

Q. In settling that claim. Referring now to plaintiff's sixth cause of action dealing with claim against it of F. Kohl, have you a similar statement of moneys, if any, expended by the Portland Gas and Coke Company in defense of that claim?

A. We paid Mr. Kohl $150, and the claim agent's charge was $25, making a total of $175 paid on that claim.

Q. Referring now to plaintiff's seventh cause of action, dealing with the claim against it of one I. M. Andrus, can you state what expenditures were incurred by the Portland Gas and Coke Company in defending that claim?

A. The expenses were as follows: Court fees

(Testimony of C. W. Platt.)

for filing $9.15. Witness fees, $90.00. Court reporter's fees, $150.70. Auto hire, $1.75. Appeal bond, $27.50. Supreme Court fee, $28.48. Printing expense for brief, $82.16. Attorneys' and claim agent's fees, $761.20. Amount paid in compromise settlement, $1635, making a total of $2785.94, all of which was paid by the Gas Company.

Q. In connection wtih the item of attorney's fees, shown in these various causes of action, I wish you would state just how the charges for attorney's services are rendered to the Gas Company, and how they are paid.

A. The attorneys who handle these matters for the Gas Company are in the employ of the Pacific Power and Light Company, and the time that they spend on matters for the Portland Gas and Coke Company is charged to them monthly on the basis of the services rendered, and these bills have been paid by the Gas Company to the Pacific Power and Light Company.

Q. Is that on the basis of the service rendered, or on the basis of the time spent on any particular *am*tter?

A. Well, it is on the *bais* of the service rendered.

Q. The item of the attorney's fees in the Andrus fees amounted to $761.20. Was all of that paid to the attorneys for the Pacific Power and Light?

A. I beg your pardon, Mr. Laing.

Q. I say was that item of $761.20 in the I. M.

(Testimony of John A. Laing.)

Andrus claim was that all paid the *for the* Pacific Power and Light Company?

A. In that sum there was $200.00 paid to John F. Logan who worked with the Pacific Power and Light Company's attorneys on the case.

Q. In other words, he was employed in addition to the attorneys who had previously handled the other cases. He was employed independently in that case, was he not?

A. Yes, sir.

Q. And he was paid $200 for his services?

A. Yes, sir.

No Cross Examination. Witness Excused.

JOHN A. LAING, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination (without questioning).

I would just like to explain briefly the item of attorney's expenses in those various claims, for the reason that on their face they may appear to be somewhat large in proportion to the settlements actually made. I am employed by the Pacific Power and Light Company, as its attorney, and that Company is, to a certain extend, *affliated* with the Portland Gas and Coke Company, having some of the same operating officials. The Pacific Power and Light Company pay the expenses of my department, including my salary, that of Mr. Strong,

(Testimony of John A. Laing.)

and our two stenographers. Whatever work we do each day during the month a record is kept of it, and at the end of the month a charge is made to each company, or to each job that we do during the month. On the basis of the actual time and pro rate of the salary involved in that work. So that in those *charge* for attorney's services shown in these various causes of action, the charges for attorney's fees in each instance represent the actual time of my department, including my services, Mr. Strong's and the two stenographers, spent on these particular cases, apportioned on the basis of the salaries paid to us during that period. In the case of Louis Weich, the first cause of action, a substantial charge is shown there for attorney's fees, which may be explained by reference to the record of the trial of that case. The case was the forerunner of a number of suits that were filed in varying amount demanded from twenty to twenty-five thousand dollars, and it therefore was important that the circumstances and the law surrounding the question of liability be thoroughly investigated, and a great deal of the time spent on the Weich case worked to the company's advantage in connection with the other cases which were tried later, or which were brought later. The case was tried before Judge Gatens and a jury in March, 1914, and required five days to try it. Later, motion was made for a new trial, in connection with which a brief was prepared, and there were several arguments and hear-

(Testimony of John A. Laing.)

ings before Judge Gatens, in connection with that, all of which took a great deal of time. In the meantime we were obliged to prepare a bill of exceptions, preparatory to appealing the case to the Supreme Court, and we practically spent as much time on the case as if we had perfected our appeal to the Supreme Court. The charges given in Mr. Platt's testimony represent only the actual time spent by us in connection with that case. In connection with the case of I. M. Andrus, which is set forth in plaintiff's seventh cause of action, the litigation in that case was very active from the time the complaint was filed in February, 1914, until the time the case was settled in March, 1915. The case was tried before a jury, taking three days in court for both Mr. Strong and myself. A motion was made for a new trial, that was supplemented by two amended motions for a new trial. A very complete brief was prepared and filed on the motion for a new trial, and later on appeal was taken to the Supreme Court, and an extensive brief prepared, and filed in connection with that appeal. A brief was also prepared in answer to a counter appeal which was made by the plaintiff in that case so that a great deal of the time of the Legal Department was occupied in connection with that case for a period of about a year. The time that was so spent is all that is represented in these charges shown in Mr. Platt's testimony, except that we employed Mr. John F. Logan to assist in arguing the motion for

(Testimony of John A. Laing.)

a new trial and to assist in the preparation of the brief to the Supreme Court, for which we paid him $200. I think that is all.

Mr. STRONG: Do you want to cover the reasonableness of the charges?

Mr. SENN: We don't question the reasonableness of the charge.

Witness excused.

Mr. LAING: I would like to stipulate and have the record show also that while the plaintiff in this case requests an allowance for attorney's fees, in this particular case we waive that request in respect to each cause of action, and do not ask for any attorney's fees, in prosecuting this particular case. All that we ask is that the Gas Company be recompensed for the amount it actually paid for attorney's in defending these seven causes of action.

Plaintiff rests. No defense.

Mr. SENN: The legal matters were submitted to your Honor on demurrer, and I presume there will be no change.

COURT: The plaintiff may take judgment in accordance with the proof.

That the defendant by its attorney objected to the judgment of the court, *an* an exception was duly allowed the defendant.

Exception No. 3.

That afterwards, on to-wit the 10th day of August, 1915, said Court made the following Findings of Fact and Conclusion of Law:

In the District Court of the United States for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a corporation,

Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY,
a corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on duly and regularly for trial in open court upon the issues raised by the pleadings herein before the court without a jury having been expressly waived by written stipulation and consent of the parties duly filed in this cause; the plaintiff appeared and was represented in court by John A. Laing and H. W. Strong, its attorneys, and the defendant by Senn, Ekwall & Recken, its attorneys; whereupon the court duly heard the testimony of certain witnesses and heard the evidence presented by the plaintiff, the defendant producing no witnesses or evidence, and the court being fully advised in the premises now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT.

The Court find generally for the plaintiff and against the defendant upon each of the seven causes of action set out in plaintiff's complaint.

CONCLUSIONS OF LAW.

The court concludes that plaintiff is entitled to judgment against the defendant upon the first cause of action for the sum of $1680.88, with interest thereon at the rate of 6% per annum from April 30th, 1914; upon the second cause of action for the sum of $262.30 with interest thereon at the rate of 6% per annum from August 31st, 1914; upon the third cause of action for the sum of $200.00 with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of $125.00 with interest thereon at the rate of 6% per annum from April 1st, 1914; upon the fifth cause of action for the sum of $150.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of $175.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of $2,785.94 with interest thereon at the rate of 6% per annum from March 22nd, 1915; and for its costs and disbursements incurred herein taxed at the sum of $..... and that execution issue therefor.

Dated at Portland, Oregon, August 10th, 1915.

R. S. BEAN,
Judge."

That this defendant by its counsel objected to the foregoing Findings and Conclusions of said Court, said objection being overruled and an exception was duly allowed this defendant.

Exception No. 4.

That on to-wit the 10th day of August, 1915, this court rendered the following judgment against the defendant, said judgment, ommitting the title and venue, being as follows:

"This cause coming on regularly for trial before the court without a jury, a jury having been expressly waived by the parties hereto by written stipulation duly filed with the clerk of this court, the plaintiff appearing by its attorneys John A. Laing, and H. W. Strong, and the defendant by its attorneys, Senn, Ekwall and Recken, and the court having heard and considered the testimony and evidence herein and having made and filed its Findings of Fact and Conclusions of Law herein and being fully advised in the premises, it is therefore,

ORDERED AND ADJUDGED that the plaintiff have and recover judgment against the defendant upon the first cause of action herein for the sum of $1680.88 with interest thereon at the rate of 6% per annum from April 30th, 1914; upon the second cause of action for the sum of $262.30 with interest thereon at the rate of 6% per annum from August 31st, 1914; upon the third cause of action for the sum

of $200.00 with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of $125.00 with interest thereon at the rate of 6% per annum from April 1st, 1914; upon the fifth cause of action for the sum of $150.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of $175.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of $2,785.94 with interest thereon at the rate of 6% per annum from March 22nd, 1915; and for its costs and disbursements incurred herein taxed at the sum of $..... and that execution issue therefor.

Dated at Portland, Oregon, August 10th, 1915.

R. S. BEAN.
Judge."

That this defendant by its counsel objected to the rendering of said judgment, said objection being by the Court overruled and an exception allowed this defendant.

Exception No. 5

That on to-wit the 10th day of August, 1915, this defendant presented to the Court, for allowance, the following proposed Finding of Fact, upon the First Cause of Action, in plaintiff's complaint.

I.

"That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor's Employer's Liability Policy" and which policy was introduced in evidence, and made a part thereof and is marked Plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendant shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily

injuries accidentially suffered or alleged to have been suffered by an employee or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work, plaintiff supplied to one Louis Weich water for drinking purposes during the months of August and September, 1913, and while the aforesaid policy was in full force and effect. That said Louis Weich by reason of drinking said water so furnished by plaintiff contracted typhoid fever and afterwards, to-wit:

On the 15th day of January, 1914, said Louis Weich brought action against the plaintiff in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that the water

furnished him by the plaintiff was unwholesome and unfit for drinking purposes and that the plaintiff was careless and negligent in furnishing him such unwholesome drinking water and that by reason of said action this plaintiff was required to incur expense in defending said action, as follows, to-wit:

Filing fees, less refund.....	$ 2.90
Automobile hire	21.38
Attorney's and Claim Agent's fees	588.00
Reporter's fees	232.90
Witness fees	75.00
Doctor's fees (expert testimony)	160.00
Sum paid in compromise settlement	600.00
	$1680.88

That said sum was paid by the plaintiff and is a reasonable disbursement in said action of Louis Weich being the first cause of action set forth in plaintiff's complaint.

VII.

That said sum of $1680.88 was paid by this plaintiff on the 30th day of April, 1914. That the injuries suffered by the said Louis Weich resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally

suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Finding of Fact, and an exception was allowed the defendant, to the refusal of the court to allow said Finding of Fact, upon plaintiff's first cause of action.

Exception No. 6.

That on to-wit the 10th day of August, 1915, this defendant presented to the court for allowance, the following proposed Finding of Fact, upon the Second cause of action, in plaintiff's complaint.

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road, in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in gen-

eral life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy," and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon and ending on the 20th day of Sep-

tember, 1913, at noon and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff supplied to one Joseph Duerst, an employe of plaintiff water to drink; that said Joseph Duerst claims that he contracted typhoid fever from drinking said water and on the 9th day of April, 1914, said Joseph Duerst commenced an action in the Circuit Court of the State of Oregon for Multnomah County, claiming that this plaintiff had been negligent in supplying him unwholesome and unfit drinking water, that said plaintiff was compelled to contest and defend said action at its own expense, defendant having declined to defend said action as provided by the policy; that this plaintiff in defending said action and in compromising the same was required to make the following expenditures:

Settlement and compromise with Joseph Duerst	$150.00
Clerk's fees, less refund	.95
Doctor's fees in examination	15.00
Attorney's and claim agent's fees	96.35
	$262.30

That said sum of $262.30 was paid by the plaintiff and is a reasonable disbursement in said claim

of said Joseph Duerst being the plaintiff's second cause of action herein.

VII.

That said sum of $262.30 was paid by this plaintiff on the 31st day of August, 1914. That the injuries suffered by the said Joseph Duerst resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Finding of Fact, and an exception was allowed the defendant to the refusal of the court to allow said Finding of Fact, upon plaintiff's second cause of action.

Exception No. 7.

That on to-wit the 10th day of August, 1915, the defendant presented to the court for allowance the following proposed Finding of Fact, upon the third cause of action in plaintiff's complaint.

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State

of Oregon; and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy," and which policy was introduced in evidence and made a part hereof and is marked plaintiff's exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employes of the plaintiff by reason of plaintiff's construc-

tion work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon and ending on the 20th day of September, 1913, at noon and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff supplied to one C. Hastings drinking water, during the months of July, August and September in the year of 1913; that said C. Hastings alleged that he contracted typhoid fever from drinking said water; that said water was unwholesome and unfit and that plaintiff was negligent in furnishing the same to said C. Hastings; that said C. Hastings made claim against this plaintiff for damages by reason of injuries suffered in contracting said typhoid fever from drinking said water and threatened to bring action against plaintiff unless settlement was made; that plaintiff incurred *an* paid in disposing of said claim of said C. Hastings the following sum:

Paid in settlement to said C. Hastings	$150.00
Attorney's fees	50.00
	$200.00

That said sum of $200.00 is a reasonable disbursement in said claim of said C. Hastings and was paid by this plaintiff; that defendant denied liability under its policy of insurance on the ground that typhoid fever was not covered under said policy and was not a bodily injury accidentally suffered.

VII.

That said sum of $200.00 was paid by this plaintiff on the 1st day of December, 1914; that the injuries suffered by the said C. Hastings resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Findings of Fact, and an exception was allowed the defendant, to the refusal of the court to allow said Findings of Fact, upon plaintiff's third cause of action.

Exception No. 8.

That on to-wit the 10th day of August, 1915, this defendant presented to the court for allowance, the following proposed Finding of Fact, upon the fourth cause of action, in plaintiff's complaint.

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life liability and accident insurance, in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance being numbered E-01221 and entitled "Contractor Employer's Liability Policy," and which policy was introduced in evidence and made a part hereof and is marked plaintiff's exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the terms of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VII.

That in carrying on said construction work plaintiff supplied to one Otto Bush drinking water; that said Otto Bush claims that said water was contaminated, unwholesome and unfit and that as a result of drinking said water he contracted typhoid fever; that the defendant company claimed and contended

that typhoid fever was not a bodily injury accidentally suffered and declined to defend against said claim; that said Otto Bush threatened suit against this plaintiff by reason of said illness. Whereupon this plaintiff paid in disposing of said claim of said Otto Bush, the following sums:

Settlement and compromise of claim of said Otto Bush.....	$100.00
Attorney's fees	25.00
	$125.00

That said sum of $125.00 is a reasonable disbursement of said claim of Otto Bush and was paid by plaintiff.

VII.

That said sum of $125.00 was paid by this plaintiff on the 1st day of April, 1914; that the injuries suffered by the said Otto Bush resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Finding of Fact, and an exception was allowed the defendant, to the refusal of the court to allow said Finding of Fact, upon plaintiff's fourth cause of action.

Exception No. 9.

That on to-wit the 10th day of August, 1915, this defendant presented to the court for allowance, the following proposed Finding of Fact, upon the fifth cause of action, in plaintiff's complaint.

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road, in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy," and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon; and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon and ending on the 20th day of September, 1913 at noon and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff supplied to one George Harbick drinking water, which said George Harbick claims was contaminated, unwholesome and unfit and from which he claims he contracted typhoid fever and claimed that plaintiff had been negligent and careless in furnishing him said drinking water and threatened to

bring suit against this plaintiff by reason of said negligence; whereupon plaintiff was required to and did in disposing of said claim make the following payments:—

Paid in settlement to said George Harbick	$125.00
Attorney's fees	25.00
	$150.00

That said sum was paid by the plaintiff and is a reasonable disbursement; that the defendant denied liability under its policy on the ground that said policy did not cover injuries resulting from typhoid fever and that typhoid fever is not a bodily injury accidentally suffered.

VII.

That said sum of $150.00 was paid by this plaintiff on *the* March 1st, 1914, that the injuries suffered by the said George Harbick resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Finding of Fact, and an exception

was allowed the defendant, to the refusal of the court to allow said Finding of Fact, upon plaintiff's fifth cause of action.

Exception No. 10.

That on to-wit the 10th day of August, 1915, this defendant presented to the court for allowance, the following proposed Finding of Fact, upon the sixth cause of action, in plaintiff's complaint.

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance being numbered

E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof, and is marked plaintiff's exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon; and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon and ending on the 20th day of September, 1913, at noon and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff furnished drinking water to one F. Kohl; that

said F. Kohl claimed said water was unwholesome, unfit and contaminated with typhoid germs and as a result of drinking said water, said F. Kohl claims he contracted typhoid fever and alleged that plaintiff was careless and negligent in furnishing him said unwholesome and unfit water, and threatened suit against this plaintiff; that in disposing of said claim of said F. Kohl plaintiff made the following payments:

Paid F. Kohl in settlement.....	$150.00
Attorney's fees	25.00
	$175.00

That said sum was paid by the plaintiff and is a reasonable disbursement in said claim of F. Kohl; that defendant denied liability under its policy contending that typhoid fever was not a bodily injury accidentally suffered and refused to accept or pay said disbursement.

VII.

That said sum of $175.00 was paid by this plaintiff on the 1st day of March, 1914; that the injuries suffered by the said F. Kohl resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and

does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Finding of Fact, and an exception was allowed the defendant, to the refusal of the court to allow said Finding of Fact, upon plaintiff's sixth cause of action.

Exception No. 11.

That on to-wit the 10th day of August, 1915, this defendant presented to the court for allowance, the following proposed Finding of Fact, upon the seventh cause of action, in plaintiff's complaint.

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road, in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of of Oregon.

III.

That on or about March 20, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon; and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff supplied to one I. M. Andrus drinking water during the months of July, August and September; that said I. M. Andrus claims that he contracted typhoid fever from the drinking of such water; that said water was contaminated with typhoid germs and that plaintiff was careless and negligent in furnishing such contaminated water to its employes; that on the 13th day of February, 1914, said I. M. Andrus brought action against the plaintiff in the Circuit Court of Multnomah County, for the State of Oregon and for damages resulting from said illness contracted as he claims from drinking said water; that plaintiff in defending said claim and suit incurred and paid the following sums of money:—

Fees in Circuit Court	$ 9.15
Witness fees and expert testimony	90.00
Reporter's fees	150.00
Automobile expense	1.75
Appeal bond	27.50
Filing fee in Supreme Court and copy of transcript	28.48
Printed abstract and briefs in Supreme court	82.16
Attorney's and Claim Agent's fees	761.20
Amount paid in compromise settlement	1635.00
	$2785.94

That said sum was paid by the plaintiff and is a reasonable disbursement; that defendant denied liability under its policy on the ground that typhoid fever was not a bodily injury accidentally suffered.

That said sum of $2785.94 was paid by this plaintiff on the 22nd day of March, 1915; that the injuries suffered by the said I. M. Andrus resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy.

That the court on said 10th day of August, 1915, disallowed said Finding of Fact, and an exception was allowed the defendant, to the refusal of the court to allow said Finding of Fact, upon plaintiff's seventh cause of action.

Exception No. 12.

That, on to-wit, the 10th day of August, 1915, this defendant presented to the court, for allowance, the following proposed General Finding of Fact upon all of the causes of action set forth in plaintiff's complaint.

"And generally the court finds that said Louis Weich, Joseph Duerst, C. Hastings, Otto Bush, George Harbick, F. Kohl, and I. M. Andrus were

all employes of the plaintiff company during the months of July, August and September, and particularly during the time that said employes contracted said typhoid fever; that the defendant company contended that said policy of insurance did not cover typhoid fever for the reason that typhoid fever was not a bodily injury accidentally suffered and declined to indemnify plaintiff for any disbursement that plaintiff might make; that the damages claimed by said employes were all for typhoid fever resulting from the drinking of water which was furnished said employes by plaintiff during the working hours of said plaintiff.

That the court on the said 10th day of August, 1915, disallowed said General Finding of Fact and an exception was allowed to defendant to the refusal of the court to allow said General Finding of Fact, upon all of the causes of action set forth in plaintiff's complaint.

Exception No. 13.

That on to-wit the 10th day of August, 1915, this defendant presented to the court, for allowance the following proposed Conclusion of law upon the first cause of action, set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's first cause of action, the court concludes that plaintiff is not entitled to recover upon its first cause of action and that the defendant is

entitled to its costs and disbursements upon said first cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed Conclusion of Law, and an exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's first cause of action.

Exception No. 14.

That on to-wit the 10th day of August, 1915, this defendant presented to the court for allowance the following proposed Conclusion of law upon the second cause of action set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's second cause of action the court concludes that plaintiff is not entitled to recover upon its second cause of action and that the defendant is entitled to its costs and disbursements upon said second cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed Conclusion of Law, and an exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's second cause of action.

Exception No. 15.

That on to-wit, the 10th day of August, 1915, this defendant presented to this court, for allowance

the following proposed Conclusion of Law, upon the third cause of action set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's third cause of action, the court concludes that plaintiff is not entitled to recover upon its third cause of action and that defendant is entitled to its costs and disbursements upon said third cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed conclusion of law, and an exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's third cause of action.

Exception No. 16.

That on to-wit, the 10th day of August, 1915, this defendant presented to the court for allowance the following proposed Conclusion of Law upon the fourth cause of action, set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's fourth cause of action, the court concludes that plaintiff is not entitled to recover upon its fourth cause of action and that the defendant is entitled to its cost and disbursements upon said fourth cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed conclusion of law, and an

exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's fourth cause of action.

Exception No. 17.

That on to-wit, the 10th day of August, 1915, this defendant presented to the court for allowance the following proposed Conclusion of Law upon the fifth cause of action, set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's fifth cause of action, the court concludes that plaintiff is not entitled to recover upon its fifth cause of action and that the defendant is entitled to its cost and disbursements upon said fifth cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed conclusion of law, and an exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's fifth cause of action.

Exception No. 18.

That on to-wit, the 10th day of August, 1915, this defendant presented to the court for allowance the following proposed Conclusion of Law upon the sixth cause of action, set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's sixth cause of action, the court concludes that plaintiff is not entitled to recover upon its sixth cause of action and that the defendant is entitled to its costs and disbursements upon said sixth cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed conclusion of law, and an exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's sixth cause of action.

Exception No. 19.

That on to-wit, the 10th day of August, 1915, this defendant presented to the court for allowance the following proposed Conclusion of Law upon the seventh cause of action, set forth in plaintiff's complaint.

"Based upon the court's findings of fact upon plaintiff's seventh cause of action, the court concludes that plaintiff is not entitled to recover upon its seventh cause of action and that the defendant is entitled to its costs and disbursements upon said seventh cause of action."

That the court on said 10th day of August, 1915, disallowed said proposed conclusion of law, and an exception was allowed the defendant to the refusal of the court to allow said Conclusion of Law, upon plaintiff's seventh cause of action.

Exception No. 20.

That on to-wit, the 10th day of August, 1915, this defendant presented to the court for allowance, the followinig proposed conclusion of law, upon all of the causes of action set forth in plaintiff's complaint.

"And the court concludes that plaintiff is not entitled to recover in this action, for the reason that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the said policy of insurance."

That the court on said 10th day of August, 1915, disallowed said proposed conclusion of law, and an exception was allowed the defendant to the refusal of the court to allow said conclusion of law, upon plaintiff's complaint.

WHEREUPON the court now being willing to preserve the record in order that its rulings may be reviewed for error, if any there be, now certifies that the foregoing bill of exceptions contains all of the evidence offered or admitted on the trial, together with the rulings of the court, and all of the Findings of Fact and Conclusions of Law, of the court, together with all of defendant's proposed Findings of Fact and Conclusions of Law, and also all of the exhibits introduced at the time of the trial.

WHEREUPON, this bill of exceptions is now here settled, certified and signed this 17th day of August, 1915.

R. S. BEAN, Judge.

Filed August 17, 1915.

G. H. MARSH, Clerk.

PLAINTIFF'S EXHIBIT "A."

Policy No. E-91221.

AETNA LIFE INSURANCE COMPANY,

Accident and Liability Department.

Contractors Employers Liability Policy.

In Consideration of the premium herein provided, the Aetna Life Insurance Company of Hartford, Connecticut (called the Company),

Does Hereby Agree to Indemnify

Insuring Clause.

the Assured described in the Warranties hereof, within the amounts as expressed herein, Against Loss and/or Expense Arising or Resulting from Claims Upon the Assured for Damages on account of bodily injuries and/or death accidentally suffered, or alleged to have been suffered, by an employee or employees of the Assured as provided in said Warrenties, by reason of the business as described and conducted at the locations named there-

in, whether said injuries and/or death are accidentally suffered, or alleged to have been suffered, at the locations named or elsewhere, save and except claims arising by reason of:

(1) Injuries and/or death to or caused by any person employed in violation of law as to age, or of any age under fourteen (14) years, where there is no legal restriction as to age of employment.

(2) Liability of others assumed by the Assured under any contract or agreement, oral or written.

Subject to all agreements and conditions hereof, claims are covered whenever arising, on account of accidents or alleged accidents occurring within the Policy period stated herein.

This Insurance is Subject to the Following Conditions:

Reporting Accidents and Claims.

A. Upon the occurrence of an accident covered by this Policy the Assured shall give immediate written notice thereof, with the fullest information obtainable at the time, to the Company or its duly authorized agent. If a claim is made on account of such accident the Assured shall give like notice thereof with full particulars. The Assured shall at all times render to the Company all co-operation and assistance in his power.

Report and Defense of Suits.

B. If suit is brought against the Assured to enforce a claim for damages covered by this policy he shall immediately forward to the Company every summons or other process as soon as the same shall have been served on him, and the Company will, at its own cost, defend such suit in the name and on behalf of the assured.

Co-Operation of Assured.

Expense.

C. The Assured, whenever requested by the Company, shall aid in effecting settlements, securing information and evidence, the attendance of witnesses and in prosecuting appeals, but the Assured shall not voluntarily assume any liability or interfere in any negotiation for settlement, or in any legal proceeding, or incur any expense or settle any claim, except at his own cost, without the written consent of the Company previously given.

Assurer's Right of Recovery.

D. No action shall lie against the Company to recover for any loss and/or expense under this Policy unless it shall be brought by the Assured for loss and/or expense actually sustained and paid in money by him after actual trial of the issue, nor unless such action is brought within two years after payment of such loss and/or expense.

Subrogation of Rights.

E. In case of payment of loss and/or expense under this Policy the Company shall be subrogated,

to the amount of such payment, to the Assured's rights of recovery against others for such loss and/or expense, and the Assured shall execute all papers required and shall co-operate with the Company to secure such rights.

Concurrent Insurance.

F. If the Assured carry a policy of another insurer, against any loss and/or expense covered by this Policy, the Assured shall not recover from the Company a larger proportion of the entire loss and/or expense than the amount hereby insured bears to the total amount of valid and collectible insurance applicable thereto.

Change of Interest.

G. No assignment of interest under this Policy shall be valid unless the written consent of the Company is endorsed hereon, signed by its President, a Vice-President, Secretary or Assistant Secretary.

Basis of Premium.

H. The premium is based on the entire compensation earned during the period of this Policy by all persons engaged in the business as described in the Warranties hereof who are not specifically excluded. If such entire compensation exceeds the sum set forth in said Warranties, the Assured shall immediately pay to the Company the additional premium earned. If such entire compensation is less than the sum set forth in said Warranties the Company will return the unearned pre-

mium when determined, but in any event the Company shall retain the minimum premium stated in said Warranties.

Wage Statements.

I. The Assured shall, when requested, furnish the Company with a written statement of the amount of compensation, according to the classifications described in the Warranties hereof, earned by all persons engaged in the business covered by this Policy during the whole or any part of the Policy period. The Company shall be permitted at all reasonable times to examine the books and records of the Assured as respects such compensation, provided a request for such examination is made within one year from the expiration of the Policy period, and the Assured shall render all reasonable assistance. The rendering of any statement of such compensation, or any payment of premium thereon shall not bar the examination herein provided for, nor the Company's right to any additional premium earned.

Inspection.

J. The Company shall be permitted at all reasonable times to inspect the plant, works, machinery and appliances used in the business covered by this Policy.

Cancellation.

K. This Policy may be cancelled at any time by either of the parties hereto upon written notice to the other party stating when thereafter cancellation

shall be effective. The date of cancellation shall then be the end of the Policy period. If such cancellation is at the request of the Assured and he has not retired from the business described in the Warranties hereof, the compensation for the full original Policy period shall be computed upon the basis of the compensation to date of cancellation, and the earned premium calculated at short rates in accordance with the table printed hereon. In any event where cancellation is at the request of the Assured, the Company shall retain not less than the minimum premium stated in said Warranties. Notice of cancellation mailed to the address of the Assured stated in said Warranties shall be a sufficient notice, and the check of the Company similarly mailed a sufficient tender of any unearned premium, when determined.

Alterations in Policy.

L. No condition or provision of this Policy shall be waived or altered except by written endorsement attached hereto and signed by the President, a Vice-President, Secretary or Assistant Secretary of the Company; nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person, be held to effect a waiver or change in any part of this contract. Upon the acceptance of this Policy the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein. The personal pro-

noun herein used to refer to the Assured shall apply regardless of number and gender.

Authorized Agents.

M. No person shall be deemed an agent of the Company unless such person is authorized in writing as such agent by the President, a Vice President, Secretary or Assistant Secretary of the Company.

This space is intended for the attachment of such endorsements as may be executed as provided in the Policy, and, when so executed and attached they are to be construed as a part of the Policy.

Endorsement.

It is hereby agreed that this Policy does not cover any obligation assumed by or imposed upon the Assured by any Workmen's Compensation agreement, plan or law, unless the policy is extended by an endorsement covering such obligation.

E. C. HIGGINS, Secretary.

Endorsement 111539.

(Additional Operations.)

It is hereby understood and agreed that from noon of October 1st, 1913, this Policy, subject to its terms, conditions and agreements, covers the testing and trying out of machinery at the premises described in the policy.

It is further agreed, that the assured will keep a separate record of the actual wage expended in the

prosecution of the work above described, and will pay a premium thereon computed at a rate of one dollar and fifty cents for each one hundred dollars ($100.00) thereof. ($1.50)————————————

Attached to and forming a part of Policy No. E-91221, dated March 20th, 1913, issued by the Aetna Life Insurance Company, Accident and Liability Department of Hartford, Connecticut, to Portland Gas and Coke Company.

Hartford, Conn., January 3rd, 1914.

E. C. HIGGINS, Secretary.

Endorsement 109879.

(Policy Extended to Expire January 1st, 1914.)

It is hereby understood and agreed that this Policy is extended for a period of three months and twelve days to expire January 1st, 1914, instead of September 20th, 1913, as originally written.

Attached to and forming part of Policy No. E-91221, dated March 20th, 1913, issued by the Aetna Life Insurance Company, Accident and Liability Department of Hartford, Conn., to Portland Gas and Coke Company.

Hartford, Conn., November 5th, 1913.

E. C. HIGGINS, Secretary.

Form 5544—MC.

Endorsement 109126.

(Policy Extended to Expire October 31st, 1913.)

It is hereby understood and agreed that this

Policy is extended for a period of one month and eleven days to expire October 31st, 1913, instead of September 20th, 1913, as originally written.

Attached to and forming part of Policy No. E-91221, dated March 20th, 1913, issued by the Aetna Life Insurance Company, Accident and Liability Department of Hartford, Conn., to Portland Gas and Coke Company.

Hartford, Conn., September 29th, 1913.

E. C. HIGGINS, Secretary.

Endorsement 107057.

Additional Operations.

It is hereby understood and agreed that from noon of May 14th, 1913, this Policy, subject to its terms, conditions and agreements, cover concrete floors or pavements not self bearing, at the premises described in the Policy.

It is further agreed that the assured will keep a separate record of the actual wages expended in the prosecution of the work above described, and will pay a premium thereon computed at a rate of two dollars and eighty-five cents for each one hundred dollars ($100.00) thereof.

Attached to and forming part of Policy E-91221, dated March 20th, 1913, issued by the Aetna Life Insurance Company, Accident and Liability Depart-

ment of Hartford, Conn., to Portland Gas and Coke Company.

Hartford, Conn., June 11th, 1913.

E. C. HIGGINS, Secretary.

Endorsement 120961.

(Monthly Adjustment of Premium, $60.00 Deposit.)

1. The advance premium stated in this Policy is not based upon the estimated wages for the full policy, but is the sum hereby agreed to be paid in cash upon delivery of the Policy.

2. On or before the twentieth day of each month succeeding the month in which this Policy is issued the assured shall state to the Company in writing the full amount of compensation earned by his employes during the preceding calender month, or such part thereof as is within the policy period, and pay to the Company in money the entire premium earned upon such compensation at the rates named in the Policy; the advance premium to be applied to the last monthly settlement in the policy period.

3. If the assured shall fail to make such statement or pay such earned premium as provided in the foregoing paragraph such neglect or failure shall entitle the Company, at its option, to cancel the Policy upon ten days' notice to the assured and calculate the earned premium to date of cancellation at short rates, in accordance with the table printed in the Policy.

Attached to and forming part of Policy E-91221,

dated March 20th, 1913, issued by the Aetna Life Insurance Company, Accident and Liability Department, of Hartford, Conn., to Portland Gas and Coke Company.

Hartford, Conn., April 16th, 1913.

J. S. ROWE, Secretary.

Endorsement 120960.

(Schedule of Operations and Rates Applying.)

Classified Description of the business.	Premium rate per $100.00 of wages.
Timekeepers and watchmen	$2.85
Masons and helpers	7.875
Carpenter work interior trim and finish	2.85
Carpenters, construction away from shop not bridge building, nor grain elevator construction work	5.25
Tile partition and floors not self bearing	2.475
Plumbin*h*, gas, steam and hot water apparatus fitters, and installation of ventilating plants	2.25
Electrical equipment, installation within buildings, exclusively	3.75
Lathers, plasterers and glazing	2.85
P*l*ainters, interior work exclusively	2.85
Concrete building foundations	6.75
Concrete work, buildings, not grain elevator, including the setting up and taking down of frames and falsework	9.00
Fire proof tile, construction and repair of partitions	6.75

Cellar excavation, no caissons or sub-aqueous work, including digging holes and filling them with concrete for foundations for buildings 7.875
Gas, works, laying of mains and connections, no tunneling 6.75
Millwrights, placing and erecting of machinery by means of hoisting devices..... 3.90
Pile driving and building foundations and wharf building 7.875
Roofers, gravel or composition..... 4.50
Road or street making..... 3.375

Attached to and forming part of Policy No. E-91221, dated March 20th, 1913, issued by the Aetna Life Insurance Company, Accident and Liability Department, of Hartford, Conn., to Portland Gas and Coke Co.

Hartford, Conn., April 16th, 1913.

J. V. ADAMS, Asst. Secretary.

Short Rate Cancellation Table.

Take the percentage indicated opposite the number of days or months Policy has been in force, upon the premium for the full original Policy period calculated as provided in Condition K, and the result will be the premium earned in case of cancellation. Short rate premium for periods not specifically named in this table must be charged at a rate proportionate to the rate charged for the next proceeding and succeeding periods.

POLICIES ISSUED FOR TERM OF ONE YEAR.				POLICIES ISSUED FOR TERM OF THREE YEARS.			
Policy in Force.	Per Cent. of Premium.	Policy in Force.	Per Cent of Premium.	Policy in Force.	Per Cent of Premium.	Policy in Force.	Per Cent of Premium.
1 day ..	1%	51 days	27%	1 month ..	8%	19 months..	66%
2 days..	2%	54 days	28%	2 months..	12%	20 months..	68%
3 days..	3%	57 days	29%	3 months..	16%	21 months..	70%
4 days..	4%	60 days	30%	4 months..	20%	22 months..	72%
5 days..	5%	65 days	32%	5 months..	24%	23 months..	74%
6 days..	6%	70 days	34%	6 months..	28%	24 months..	76%
7 days..	7%	75 days	36%	7 months..	32%	25 months..	78%
8 days..	8%	80 days	38%	8 months..	36%	26 months..	80%
9 days..	9%	85 days	39%	9 months..	39%	27 months..	82%
10 days..	10%	90 days or 3 months.	40%	10 months..	42%	28 months..	84%
12 days..	11%	105 days	45%	11 months..	45%	29 months..	86%
14 days..	12%	120 days or 4 months.	50%	12 months..	48%	30 months..	88%
16 days..	13%	135 days	55%	13 months..	50%	31 months..	90%
18 days..	14%	150 days or 5 months.	58%	14 months..	53%	32 months..	92%
20 days..	15%	165 days	64%	15 months..	56%	33 months..	94%
22 days..	16%	180 days or 6 months.	68%	16 months..	59%	34 months..	96%
24 days..	17%	195 days	73%	17 months..	61%	35 months..	98%
26 days..	18%	210 days or 7 months.	75%	18 months..	63%	36 months..	100%
28 days..	19%	225 days	78%				
30 days..	20%	240 days or 8 months.	80%				
33 days..	21%	255 days	81%				
36 days..	22%	270 days or 9 months.	85%				
39 days..	23%	285 days	87%				
42 days..	24%	300 days or 10 months.	90%				
45 days..	25%	315 days	92%				
48 days..	26%	330 days or 11 months.	95%				
		360 days or 12 months.	100%				

Limits of Indemnity.

N. The Company's liability for loss on account of an accident resulting in bodily injuries and/or death to one person is limited to ten thousand dollars ($10,000.00); and, subject to the same limit for each person, the Company's total liability for loss on account of any one accident resulting in bodily injuries and/or death to more than one person is limited to twenty thousand dollars ($20,000.00.) The Company will, however, as provided in Conditions B and C hereof, pay the expense of litigation in addition to the sum herein limited and will also pay all costs taxed against the Assured in any legal proceeding defended by the Company, and interest accruing after entry of judgment upon such part

thereof as shall not be in excess of the limits of the Company's liability herein expressed.

Policy Period.

O. The Policy period shall be six months, beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, standard time at the location of the business described in the Warranties hereof.

Warranties.

P. The following Warranties, numbered 1 to 11 inclusive, are hereby made a part of this contract, and are acknowledged and warranted by the Assured to be true upon the acceptance of this Policy, except such as are declared to be matters of estimate only.

Warranties.

1. Name of Assured: Portland Gas and Coke Company.

2. Address of Assured: 5th and Yamhill Sts., Portland, Multnomah County, Oregon.
(Name Street, Town, County and State where Head Office is located).

3. The Assured is: Oregon Corporation.
(State whether individual, estate, co-partnership or corporation, and if a corporation name State in which incorporated; if a co-partnership give the names of each member hereof.)

4. CLASSIFIED DESCRIPTION OF THE BUSINESS — All operations incidental to the following business, in and during the continuance thereof.	Estimated Average Number of Employees.	Estimated Entire Compensation for 12 Months.	Premium Rate per $100 of Compensation.	Estimated Premium	Town, Street and Number Where Business Is Located.
See Schedule.	Varies.	Monthly Adjustment.	Varies.	$60.00 Deposit.	Adjoining Government Moorings, between Willamette River and Linnton Road, Multnomah County, Ore.
SPECIAL OPERATIONS.					
Demolition or wrecking of any structure.	None.				
Operation of locomotives and/or cars by means of locomotives.	None.				

5. The foregoing statement correctly describes the business to be insured, including all usual or special operations incident thereto, and the locations at which said business is conducted. None of the special operations described will be covered unless the estimated average number of persons engaged in such special operations, their estimated compensation, and the premium rate, are specifically stated herein.

6. The estimated compensation includes that of all persons engaged in the business as described herein (whether compensated by salary, wages, for piecework, overtime or allowances, and whether paid in cash—in whole or in part—in board, store certificates, merchandise, credits or any substitute for cash), to whom compensation of any nature is

paid, including President, Vice-President, Secretary, Treasurer and Clerical force, except as follows: Prest., Vice-Prest., Secy., Treas., and Office Clerical force.

7. Claims arising by reason of injuries and/or death to persons, whose compensation is excluded herein are not covered, except as to drivers who are specifically enumerated in any concurrent Teams Policy carried by the Assured with this Company while such drivers are employed in operations not connected with the driving or using of teams.

8. If complete and accurate payroll records are not kept corresponding to the classifications herein described the total actual payroll shall be considered as expended under the highest rated classification.

9. No dynamite, nitroglycerine or explosive powder is made, sold, kept or used in the business described herein, except as follows: No exceptions.

10. The deposit premium for this Policy is Sixty and no/100 Dollars ($60.00), due and payable as follows:

Sixty and no-100 dollars ($60.00) March 20th. 1913.

11. The minimum premium for this Policy shall be Sixty and no-100 dollars ($60.00).

In Witness Whereof, the Aetna Life Insurance Company has caused these presents to be signed by its President and Secretary, but the same shall not

be binding unless countersigned by an authorized agent of the Company.

M. G. BUCKELEY, President.

E. C. HIGGINS, Secretary.

Countersigned at Portland, Oregon, this 21st day of April, 1913.

McCARGAR, BATES & LIVELY,

General Agent.

And Afterwards, to-wit, on the 12th day of August, 1915, there was duly filed in said Court, and cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

The Aetna Life Insurance Company, a corporation, defendant in the above entitled cause, feeling itself aggrieved by the judgment of the court, in the above entitled action, entered on the 10th day of August, 1915, by which it was adjudged that said plaintiff take judgment against this defendant in the sum of sixteen hundred eighty and 88/100 ($1680.88) on its first cause of action, with interest thereon at the rate of 6% per annum from April 30th, 1914; upon plaintiff's second cause of action for the sum of two hundred sixty-two and 30/100 dollars ($262.30) with interest thereon at the rate of 6% per annum from August 31st, 1914; upon the third cause of action for the sum of two hundred dollars, ($200) with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of one hundred

twenty-five dollars ($125.00) with interest thereon at the rate of 6% per annum from April 1st, 1914; upon its fifth cause of action for the sum of one hundred and fifty dollars ($150.00) with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of one hundred seventy-five dollars ($175.00) with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of two thousand seven hundred eighty-five and 94/100 dollars ($2784.94) with interest thereon at the rate of 6% per annum from March 22nd, 1915; and for plaintiff's costs, comes now, by its attorney, F. S. Senn, and petitions said court for an order allowing said defendant to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the 9th Circuit, under and according to the laws of the United States on that behalf made and provided; and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said writ of error, and your petitioner will ever pray.

F. S. SENN,
Attorney for Defendant.

State of Oregon,
County of Multnomah—ss.

Due and legal service of the within Petition for

Writ is hereby accepted in Multnomah County, Oregon, this 12th day of August, 1915.

JOHN A. LAING,
One of the Attorneys for Plaintiff.

Filed August 12, 1915.

G. H. MARSH, Clerk.

And Afterwards, to-wit, on the 12th day of August, 1915, there was duly filed in said Court, and cause, an Assignment of Errors, in words and figures as follows, to-wit:

ASSIGNMENT OF ERRORS.

Comes now the defendant, Aetna Life Insurance Company, above named, and in connection with its petition for a writ of error in the above entitled action, alleges that there was error on the part of the District Court of the United States, for the District of Oregon, in regard to matters and things hereinafter set forth, and the defendant thereupon makes this, its assignment of errors:

ASSIGNMENT OF ERROR NO. 1.

That the court erred in overruling Defendant's Demurrer to the Complaint of the plaintiff, said complaint being in words and figures as follows, to-wit:

In the Circuit Court of the State of Oregon for the County of Multnomah.

PORTLAND GAS & COKE COMPANY,
a corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a corporation,
Defendant.

COMPLAINT.

Comes now the plaintiff and for its first cause of action against the defendant, complains and alleges:

I.

That plaintiff is a corporation organized and existing under the laws of the State of Oregon and from the 20th day of March, 1913, to the first day of January, 1914, was engaged in the construction of a gas plant and works on its property adjoining Government Moorings, between the Willamette River and the Linnton Road in Multnomah County, Oregon, and employed a large number of men in such work.

II.

That the defendant is a corporation organized and existing under the laws of Connecticut, is engaged in general life, liability and accident insurance and has complied with the laws of Oregon with

reference to foreign insurance companies transacting business within the State of Oregon.

III.

That on or about March 20th, 1913, the defendant upon the request of the plaintiff and upon the payment by plaintiff to defendant of the premiums required, duly made, executed and delivered to plaintiff, policy of insurance numbered "Policy No. E-91221" entitled Contractors Employer's Liability Policy," by which policy the defendant in consideration of the premium provided in the policy, promised and agreed to indemnify the plaintiff against loss and or expense, arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employes of the plaintiff by reason of the said construction work and business conducted by the plaintiff on said premises, adjoining the Government Moorings, whether said injuries are accidentally suffered or alleged to have been suffered at the location or elsewhere, and to defend at its own costs any and all actions brought against the plaintiff to enforce a claim for damages covered by said policy; provided that the plaintiff forthwith forward to the defendant every summons or other process as soon as the same shall have been served upon it; that in said policy it was expressly provided that, subject to all agreements and conditions expressed therein,

claims were covered whenever arising on account of accidents or alleged accidents occurring during the time said policy was in force.

IV.

That the term of said policy was for a period of six months, beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and that by agreements duly made and endorsed on said policy the said policy period was extended from time to time to noon of January 1st, 1914, and that said policy was in full force and effect during all such time.

V.

That in carrying on said construction work on said premises the plaintiff had water carried from certain sources of water supply in that vicinity for use by the employes of the plaintiff for drinking purposes in said construction work on said premises; that there was no drinking water on said premises and the carrying and furnishing of drinking water to its employes was an incident in, and a part of, the construction work carried on by said plaintiff on said premises.

VI.

That during a portion of the months of August and September, 1913, and while said policy of insur-

ance was in full force and effect, the plaintiff had in its employ on said construction work on said premises, among others an employe by the name of Louis Weich, who was working for the plaintiff as a common laborer, excavating for concrete foundations, being one of the classified descriptions of business covered by said policy of insurance; that while so employed said Weich drank the water furnished him by the plaintiff; that on or about the 16th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that on or about the 15th day of January, 1914, commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that the water furnished him by the plaintiff herein was unwholesome and unfit for drinking purposes, and that the plaintiff herein carelessly and negligently failed to deliver to him wholesome drinking water, but instead thereof delivered to him unwholesome water which was then and there impregnated with typhoid germs and wholly unfit for drinking purposes, and that the plaintiff herein well knew, or by the exercise of reasonable precaution should have known, that the water delivered to him was unwholesome and was impregnated with typhoid germs and was unfit for drinking purposes, and that by reason of his drinking such unwholesome water he contracted typhoid fever, without any fault on his part, and then and there was ren-

dered sick and was on the 16th day of September,

1913, confined to his bed by reason of typhoid fever and was compelled to remain in bed for a long period to-wit; three months, and was made sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and his mental system was permanently shattered and he was seriously and permanently injured in that his heart was inflamed, and the valves and muscles thereof were wholly and permanently incapacitated from performing their normal functions and the lower limbs of Weich were benumbed and paralyzed and he alleged his damages at the sum of twenty thousand dollars ($20,000) and demanded judgment against plaintiff herein for said sum.

VII.

That plaintiff immediately upon being served with summons and complaint in said action, forwarded to the defendant, the summons and copy of complaint and all processes served upon it in said action, and called upon the defendant to defend such action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and or expense arising or resulting from said claim of Louis Weich, as it had agreed to do under said policy of insurance, but that the defendant refused to defend said action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally, and that therefor said policy did not

cover such claim; that the plaintiff herein thereupon employed attorneys and incurred expense in the defense of said action; that it filed answer denying liability and put said Weich upon proof of all the allegations of said complaint, that said case was duly and regularly heard and tried by a jury duly empanelled in said court and cause and that said trial resulted in a verdict in favor of said Louis Weich and against the plaintiff herein in the sum of $700.00 and his costs and disbursements; that thereafter plaintiff settled and compromised said judgment by paying to said Louis Weich in full settlement and compromise of said claim and said judgment the sum of $600.00 on or about the 30th day of April, 1914; that the expense reasonably incurred by the plaintiff herein in the defense and settlement of said action and the actual loss and expense sustained and paid in money by plaintiff herein arising or resulting from said claim upon the plaintiff, including said sum paid to said Louis Weich amounted to the sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) and is itemized as follows:

Filing fee, less refund	$ 2.90
Automobile hire	21.38
Attorney's and Claim Agent's fees	588.80
Reporter's fees	232.90
Witness fees	75.70
Doctor's fees (expert testimony)	160.00
Sum paid in compromise settlement	600.00
	$1680.88

That said sums were paid by the plaintiff between the dates of February 1st and April 30th, 1914, and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) together with interest thereon at the rate of six per cent per annum from the 30th day of April, 1914, until paid, no part of which has been paid.

VIII.

That plaintiff has complied with all the conditions named in said policy on its part to be performed as conditions precedent to its right to bring this action insofar as said conditions could be complied with by it, in view of defendant's denial of liability and its refusal to defend said claim or to live up to its obligations under said policy, and that the above claims does not *d*all within any of the excepted claims mentioned in said policy and is within the limits of liability fixed by said policy and is a claim covered by said policy.

IX.

That the sum of one hundred sixty-eight dollars ($168.00) is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a second cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in this second cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, the plaintiff had in its employ on said construction work on said premises, among other, an employe by the name of Joseph Duerst, who was working for the plaintiff as a common *labor* at pile driving, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed said Duerst drank the water furnished to him by the plaintiff, and that on or about the 30th day of September, 1913, he quit the employ of plaintiff on account of having contracted typhoid fever, and that on the 9th day of April, 1914, commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that between the first day of August, 1913, and the 30th day of September, 1913, he was employed by the plaintiff herein in and about the construction of said gas plant and factory, and that during all of said time, pursuant to his said employment, plaintiff herein undertook to deliver to him unwholesome water for drinking pur-

poses while he was engaged in said work, and that the plaintiff herein in utter disregard to its duty and obligation to furnish him, with unwholesome water, carelessly and negligently and without due consideration of his health, furnished and delivered to him for drinking water which, was then and there impure, unwholesome, impregnated with disease germs and with typhoid fever germs and wholly unfit for drinking purposes and that the plaintiff well knew, or by the exercise of resonable precaution should have known that the water so delivered was impure and unwholesome and impregnated with disease germs and with typhoid fever germs and wholly unfit for drinking purposes; that he used said water so furnished by the plaintiff herein, and by reason of drinking said water contracted typhoid fever and was thereby rendered sick and ill and was on the said 30th day of September, 1913, confined to his bed and by reason of said illness and for a period of three months thereafter was sick, ill and incapacitated from said disease and compelled to remain in bed under the care of doctors and nurses and was disabled and his vitality and physical depleted to a considerable extent and that as a result of drinking said water and of contracting said disease he contracted psoriases, and that his body and face have been as a result of the alleged negligence and carelessness of the plaintiff herein affected, blotched, discolored, disfigured and broken out in inflamed spots and sores and that he has become permanently disabled and unable to

perform manual or other labor to his damage in the sum of twenty thousand ($20,000.00) dollars, and that he has been compelled to expend one hundred twenty-seven dollars ($127.00) for hospital bills and seventy-five dollars ($75.00) for doctor bills and he demanded judgment against the plaintiff herein for said sum.

III.

That the plaintiff herein immediately upon being served with summons and complaint in said action, forwarded to the defendant the summons and copy of complaint and all processes served upon it, in said action and called upon the defendant to defend such action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and or expense arising or resulting from said claim of Joseph Duerst as it had agreed to do under said policy of insurance, but that the defendant refused to defend said action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally and that therefore said policy did not cover said claim; that the plaintiff herein therepon employed attorneys and incurred expense in the defense of such action, that it filed an answer denying all liability and that after said case was at issue the plaintiff herein settled and compromised said claim and said action by paying to said Joseph Duerst in full settlement and compromise of his said claim the sum of one hun-

dred fifty dollars ($150.00) on or about the 31st day of August, 1914; that the expense reasonably incurred by the palintiff herein in the defense and settlement and compromise of said action and the loss and expense sustained and paid in money by the plaintiff herein arising or resulting from said claim upon it, including said sum paid to Joseph Duerst amounted to the sum of two hundred sixty-two dollars and thirty cents ($262.30) and is itemized as follows:

Settlement and compromise with Duerst	$150.00
Clerk's fees, less refund	.95
Doctor's fees in examination	15.00
Attorney's and Claim Agent's fees	96.35
	$262.30

That said sums were paid between the dates of April 1st and August 31st, 1914, and that there is now due and owing to the plaintiff from the defendant said sum of two hundred sixty-two dollars and thirty cents ($262.30) together with interest thereon at the rate of six per cent per annum from the 31st day of August, 1914, no part of which has been paid.

IV.

That the sum of twenty-six dollars ($26.00) is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a third cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in his third cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during the months of July and August, and the first part of September, 1913, while said policy of insurance was in full force and effect the plaintiff had in its employe on said construction work on said premises, among others, an employe by the name of C. Hastings, who was working for the plaintiff as a common *labor* as stock and time keeper, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Hastings drank the water furnished him by the plaintiff, and that on or about the 10th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein, in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Hastings that the water furnished him for drinking purposes by the plaintiff herein was impure, and unwholesome and im-

pregnated with typhoid germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known, that the water was impure, and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 10th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish, and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff, unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Hastings, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Hastings but that the defendant denied all liability for said claim and

refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred fifty dollars ($150.00) which sum was paid unto said Hastings on or about the 1st day of September, 1914, in full settlement of said claim, that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon plaintiff amounted to the sum of fifty dollars ($50.00) in addition to said sum of one hundred fifty dollars and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of two hundred dollars together with interest thereon at the rate of six per cent per annum from December 1st, 1914.

IV.

That the sum of twenty dollars is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a fourth cause of action against the defendant complains and alleges:

1.

Plaintiff incorporates in this fourth cause of action by reference thereto and makes a part here-

of, paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of Otto Bush, who was working for the plaintiff as a carpenter, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Bush drank the water furnished him by the plaintiff and that on or about the 8th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein in the hands of attorneys for action, and that a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Bush that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff herein knew, or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of

carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 8th day of September, 1913, and was confined to his bed by reason of having typhoid fever, and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Bush, and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Bush but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred dollars, which sum was paid unto said Bush on or about the first day of April, 1914, in full settlement of said claim and compromise of said claim and the actual loss and expense

incurred by the plaintiff herein arising or resulting from said claim upon plaintiff amounted to the sum of twenty-five dollars ($25.00) in addition to said sum of one hundred dollars and that there is now due and owing to the plaintiff from defendant on account of said claim said sum of one hundred twenty-five dollars together with interest thereon at the rate of six per cent per annum from April 1st, 1914.

IV.

That the sum of twelve dollars and fifty cents is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a fifth cause of action against the defendant, complains and alleges:

I.

Plaintiff incorporates in this fifth cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of George Harbick, who was working for the plaintiff as a

common laborer in the insulation of electrical equipment, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Harbick drank the water furnished him by the plaintiff and that on or about the 11th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff herein in the hands of attorneys for action and that a claim for damages for the bodily injuries suffered by him was made on the plaintiffs herein and it was claimed by said Harbick that the water furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff knew or by the exercise of reasonable care and caution should have known, that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff herein; that he came down sick on or about the 11th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work; that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great

bodily injury and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Harbick and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Harbick, but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred twenty-five dollars, which sum was paid unto said Harbick on or about the first day of March, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon the plaintiff amounted to the sum of twenty-five dollars ($25.00) in addition to said sum of one hundred twenty-five dollars and that there is now due and owing to the plaintiff from defendant on account of said claim the sum of one

hundred fifty dollars together with interest thereon at the rate of six per cent per annum from March 1st, 1914.

IV.

That the sum of fifteen dollars is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a sixth cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in this sixth cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5, and 8 of its first cause of action.

II.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of F. Kohl, who was working for the plaintiff as a common *labor*, engaged in road making, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed the said Kohl drank the water furnished him by the plaintiff, and that on or about the 11th day of Sep-

tember, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever, and that thereafter he placed his claim for damages against the plaintiff in the hands of attorneys for action, and *tha* a claim for damages for the bodily injuries suffered by him was made on the plaintiff herein and it was claimed by said Kohl that the furnished him for drinking purposes by the plaintiff herein was impure and unwholesome and impregnated with typhoid germs and that plaintiff knew, or by the exercise of reasonable care and caution should have known that the water was impure and unwholesome and impregnated with typhoid germs and wholly unfit for drinking purposes, and that he contracted typhoid fever from drinking said water and that his sickness and injury were the result of carelessness and negligence on the part of the plaintiff, that he came down sick on or about the 11th day of September, 1913, and was confined to his bed by reason of having typhoid fever and was compelled to remain in bed for a long time and was sick, sore, lame and disordered and wholly incapacitated for work, that he endured great pain, suffering and mental anguish and that his system was permanently shattered and that he suffered great bodily injury, and demanded that the plaintiff herein settle with him and he threatened to bring action against the plaintiff unless settlement were made.

III.

That plaintiff herein immediately upon learning of said case of typhoid fever notified the defendant of the same and also immediately notified the defendant of said claim being made upon it by said Kohl and called upon the defendant to indemnify the plaintiff against said claim and all loss and expense arising or resulting or that might arise or result from said claim of said Kohl but that the defendant denied all liability for said claim and refused to have anything to do with said claim and denied that said policy of insurance covered said claim; that the plaintiff herein in order to avoid litigation settled and compromised said claim for the sum of one hundred fifty dollars, which sum was paid unto said Kohl on or about the 1st day of March, 1914, in full settlement of said claim; that the reasonable expense incurred by the plaintiff herein in settlement and compromise of said claim and the actual loss and expense incurred by the plaintiff herein arising or resulting from said claim upon the plaintiff amounted to the sum of twenty-five dollars in addition to said sum of one hundred fifty dollars and that there is now due and owing to the plaintiff from defendant on account of said claim, the sum of one hundred seventy-five dollars, together with interest thereon at the rate of six per cent per annum from March, 1914.

IV.

That the sum of seventeen dollars and fifty cents

is a reasonable sum for the court to allow as attorney's fees in this cause of action.

Plaintiff for a seventh cause of action against the defendant complains and alleges:

I.

Plaintiff incorporates in this seventh cause of action by reference thereto and makes a part hereof paragraphs 1, 2, 3, 4, 5 and 8 of its first cause of action.

III.

That during a portion of the months of August and September, 1913, while said policy of insurance was in full force and effect, plaintiff had in its employ on said construction work on said premises, among others, an employe by the name of I. M. Andrus, who was working for the plaintiff as a millwright in erecting the machinery for the briquetting plant, being one of the classified descriptions of business covered by said policy of insurance, and that while so employed as such millwright said I. M. Andrus drank the water furnished him by the plaintiff and that on or about the 7th day of September, 1913, he quit the employ of the plaintiff on account of having contracted typhoid fever and that on or about the 13th day of February, 1913, he commenced an action against the plaintiff herein in the Circuit Court of the State of Oregon

for Multnomah County, in which he alleged that the water furnished him by the plaintiff was unwholesome and unfit for drinking purposes and that plaintiff herein carelessly and negligently failed to deliver to him wholesome drinking water but instead thereof delivered to him unwholesome and impure water which was then and there impregnated with typhoid germs and wholly unfit for drinking purposes and that the plaintiff herein knew, or by the exercise of reasonable care and caution should have known, that the water delivered to him was unwholesome and was impregnated with typhoid germs and was unfit for drinking purposes; that by reason of his drinking such unwholesome water he contracted typhoid fever without any fault on his part and was then and there rendered sick and was on the said 11th day of September, 1913, confined to his bed by reason of typhoid fever and was compelled to remain in bed and in the hospital for eleven and one-half weeks and that by reason of and as a direct and proximate result of said careless and negligent act on the part of the plaintiff herein in furnishing said impure and unwholesome water he suffered great pain and mental anguish, suffered from *deliriu,* high fever and unconsciousness and that his brain, spinal cord, nerves and nervous system generally were poisoned and inflamed; that he suffered paralysis of certain muscles of his arms and legs and that he had toe drop in his left foot and an incomplete wrist drop in his right hand and was numb to pin prick over part of

the back of his right hand and forearm and over the front of his left leg and ankle and that he was permanently injured and incapacitated from performing any work whatever; that he alleged his damages at the sum of twenty-five thousand dollars, with three hundred forty-seven dollars special damages for hospital and doctor fees and demanded judgment against the plaintiff herein for said sum.

III.

That plaintiff immediately upon being served with summons and complaint in said action forwarded to the defendant a copy of said summons and complaint and all processes served upon it in said action, and called upon the defendant to defend said action in the name and on behalf of the plaintiff herein and demanded that the defendant indemnify the plaintiff against all loss and or expense arising or resulting from said claim of I. M. Andrus, as it had agreed to do under said policy of insurance; but that the defendant refused to defend such action and denied all liability therefor on the sole ground that said claim did not arise from bodily injuries suffered accidentally and that therefore said policy did not cover said claim; that the plaintiff thereupon employed attorneys and incurred expense in the defense of said action; that it filed answer denying liability and put said Andrus upon proof of all the allegations of said complaint that said case was duly and regularly heard and tried by a jury duly empanelled in said court and cause and that said trial resulted in a verdict in favor of said Andrus

and against the plaintiff herein in the sum of fifty-five hundred dollars and his costs and disbursements taxed at sixty-four dollars and ninety-five cents; that thereafter plaintiff herein appealed said case to the Supreme Court of the State of Oregon and while said appeal was pending a compromise settlement was made and effected between the plaintiff herein and said I. M. Andrus in which said judgment and claim of said Andrus against the plaintiff herein was compromised and settled for the sum of sixteen hundred thirty-five dollars on or about the 22nd day of March, 1915; that the expense reasonably incurred by the plaintiff herein in the defense of said action and in appeal to the Supreme Court and in the settlement thereof and the actual loss and expense sustained and paid in money by the plaintiff herein arising and resulting from said claim upon the plaintiff herein by said I. M. Andrus amounted to the sum of twenty-seven hundred eighty-five dollars and ninety-four cents and is itemized as follows:

Fees in Circuit Court	9.15
Witness fees and expert testimony	90.00
Reporter's fees	150.00
Automobile expense	1.75
Appeal bond	27.50
Filing fee in Supreme Court and copy of transcript	28.48
Printed abstract and briefs in Supreme Court	82.16
Attorney's and Claim Agent's fees	761.20
Amount paid in compromise settlement	1635.00
	$2785.94

That said sums were paid by the plaintiff herein between the dates of February 13th, 1915, and March 22nd, 1915, and that there is now due and owing to the plaintiff herein from the defendant on account of said claim said sum of twenty-seven hundred eighty-five dollars and ninety-four cents, together with interest thereon at the rate of six per cent per annum from the 22nd day of March, 1915, until paid, no part of which has been paid.

IV.

That the sum of two hundred seventy-eight dollars and sixty cents is a reasonable sum for the court to allow as attorney's fees in this seventh cause of action.

WHEREFORE, plaintiff demands judgment against the defendant herein on its first cause of action for the sum of sixteen hundred eighty dollars and eighty-eight cents ($1680.88) with interest thereon at the rate of six per cent per annum from April 30th, 1914, together with the sum of one hundred sixty-eight dollars ($168.00) attorney's fees; for the sum of two hundred sixty-two dollars and thirty cents ($262.30) with interest thereon at the rate of six per cent per annum from the 31st day of August, 1914, together with the sum of twenty-six dollars ($26.00) attorney's fees in the second cause of action; for the sum of two hundred dollars ($200.00) with interest thereon at the rate of six per cent per annum from December 1st, 1914, together with the

sum of twenty dollars ($20.00) attorney's fees in the third cause of action; for the sum of one hundred twenty-five ($125.00) with interest thereon at the rate of six per cent per annum from April 1st, 1914, together with the sum of twelve dollars and fifty cents ($12.50) attorney's fees in the fourth cause of action; for the sum of one hundred fifty dollars ($150.00) with interest thereon at the rate of six per cent per annum from March 1st, 1914, together with the sum of fifteen dollars ($15.00) attorney's fees in the fifth cause of action; for the sum of one hundred seventy-five dollars ($175.00) with interest thereon at the rate of six per cent per annum from March 1st, 1914, together with seventeen dollars and fifty cents attorney's fees in the sixth cause of action and for the sum of twenty-seven hundred eighty-five dollars and ninety-four cents ($2785.94) with interest thereon at the rate of six per cent per anum from March 22nd, 1915, together with two hundred seventy-eight dollars and sixty cents attorney's fees in the seventh cause of action and for plaintiff's costs and disbursements incurred herein.

JOHN A. LAING,
JOHN F. LOGAN,
H. W. STRONG,
Attorneys for Plaintiff.

That the demurrer to said complaint was as follows:

In the District Court of the United Statse for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a Corporation,
Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY,
a Corporation,
Defendant.

Comes now the defendant in the above entitled action and demurs to the complaint of the plaintiff herein, for the reason that the same does not state facts sufficient to constitute a cause of action against the defendant.

SENN-EKWALL and RECKEN,
Attorneys for Defendant.

I, F. S. Senn, one of the attorneys for the defendant, hereby certify that the foregoing demurrer is made in good faith, and is not made for the purpose of hindering or delaying the trial of the above entitled action, and I believe that the point raised by said demurrer is well taken.

F. S. SENN.

That the order overruling said demurrer was as follows:

In the District Court of the United Statse for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a Corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a Corporation,
Defendant.

Portland, Oregon, Monday, June 21st, 1915.

R. S. BEAN, D. J. (ORAL).

The case of the Portland Gas & Coke Company vs. the Aetna Life Insurance Company is an action on an indemnity policy by which the Company agreed to indemnify the plaintiff against any loss and (or) expense arising or resulting from claim upon the assured for damages on account of bodily injuries and (or) death accidentally suffered by an employe.

Certain employes of the plaintiff company contracted typhoid fever from water furnished for their use by the plaintiff. They brought actions against the plaintiff company, and recovered damages on account thereof, and the question for decision in

this case is whether that constitutes a bodily injury accidentally received or suffered within the meaning of this policy.

It will be observed that the language of this policy is exceedingly broad. It differs from many indemnity policies in that liability is not limited to injuries received from external violence nor to accidents which result in producing visible external ma*k*rs or injuries, or evidence of violence, but it is a *board* indemnity against injuries resulting from accidental causes.

Now, the English Workmen's Compensation Act of 1897 provided for compensation to workmen for personal injury by accident arising in the course of their employment. While a workman was engaged in sorting wool a bacillus passed from the wo*l*l to his eye afflicting him with anthrax from which he died. On appeal to the Privy Counsel, it was held that the injury was due to an accident within the meaning of *of* this law, because first it was an accident that the bacillus happened to be in the wool; second, it was an accident that it settled on the workman in a delicate or tender spot, and third, it was an accident that the poison found its way into the workman's system and caused his d*r*ath, and, therefore, the court held that the case came within the Compensation Act. On the same reasoning it could be properly held in this case that the injury here was an accident because it was an accident that the typhoid germs happened to be in the water furnished the

plaintiff's employes, and, second, it was an accident that the germ found favorable opportunity for development in the workmen.

A similar ruling was *announed* by the Supreme Court of Massachusetts in Hood vs. Maryland Casualty Company, 206 Mass. The policy in that case provided indemnity against loss from liability for damages on account of bodily injuries accidentally suffered, similar to the policy under consideration. The employe was a hostler and in the course of his employment he contracted glanders, through negligence of his employer. The court held the insurance company liable because the infection which caused the disease was due to accident.

So also in the case of Columbia Paper Company vs. The Fidelity and Casualty Company, 104 Mo. *Ao.,* a policy similar to the one now in controversy. The employe contracted a kidney disease by handling infected wool rags, and the court held it was within the terms of the policy, and the insurance company liable.

It is sought to distinguish those cases from the one at bar because it is claimed that in the cases referred to there was an abrasion of the body through which the poison entered the system, but as stated in the English case, that fact is immaterial because it was a more fortuitous accident that it came in contact with this particular spot, and where some affliction of our physical frame is in any way induced by acci-

dent. We should be on our guard that we are not misled by medical phrases to allow the proper *allication* of the phrase accident causing the injury, because the injury inflicted by the accident sets up a condition of things which medical men denominate disease.

Under these circumstances and they seem to be directly in point, I conclude that the injuries referred to in the complaint come within the terms and provisions of this policy, and the demurrer should be overruled.

ASSIGNMENT OF ERROR NO. 2.

That the court erred upon the trial of this cause in making the following Findings of Fact, and Conclusions of Law:

In the District Court of the United Statse for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a Corporation,
Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY,
a Corporation,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on duly and regularly for trial in open court upon the issues raised by the pleadings herein before the court, without a jury, having been expressly waived by written stipulation and consent of the parties duly filed in this cause; the plaintiff appeared and was represented in court by John A. Laing and H. W. Strong, its attorneys, and the defendant by Senn-Ewkall and Recken, its attorneys, whereupon the court duly heard the testimony of certain witnesses and heard the evidence presented by the plaintiff, the defendant producing no witnesses or evidence, and the court being fully advised in the premises, now makes its findings of fact and conclusions of law, as follows:

Findings of Fact.

The court finds generally for the plaintiff and against the defendant upon each of the seven causes of action set out in plaintiff's complaint.

Conclusions of Law.

The court concludes that plaintiff is entitled to judgment against the defendant upon the first cause of action for the sum of $1680.88 with interest thereon at the rate of 6% per annum from April 30th, 1914; upon the second cause of action for the sum of $262.30 with interest thereon at the rate of 6% per annum from August 31st, 1914; upon the

third cause of action for the sum of $200.00 with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of $125.00 with interest thereon at the rate of 6% per annum from April 1st, 1914; upon the fifth cause of action for the sum of $150.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of $175.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of $2,785.94 with interest thereon at the rate of 6% per annum from March 22nd, 1915; and for its costs and disbursements incurred herein taxed at the sum of $....., and that execution issue therefor.

Dated at Portland, Oregon, August 10th, 1915.

R. S. BEAN, Judge."

ASSIGNMENT OF ERROR NO. 3.

That the court erred in rendering the following Judgment, in favor of the plaintiff and against the defendant, said Judgment being in words and figures as follows, to-wit (ommitting the venue and title):

"This cause coming on regularly for trial before the court without a jury, a jury having been expressly waived by the parties hereto by written stipulation duly filed with the clerk of this court, the plaintiff appearing by its attorneys, John A.

Laing and H. W. Strong, and the defendant by its attorneys, Senn, Ekwall and Recken, and the court having heard and considered the testimony and evidence herein, and having made and filed its findings of fact and conclusions of law herein and being fully advised in the premises, it is therefore,

ORDERED AND ADJUDGED that the plaintiff have and recover judgment against the defendant upon the first cause of action herein for the sum of $1680.88 with interest thereon at the rate of 6% per annum from April 30th, 1914; upon the second cause of action for the sum of $262.30 with interest thereon at the rate of 6% per annum from August 31st, 1914; upon the third cause of action for the sum of $200.00 with interest thereon at the rate of 6% per annum from December 1st, 1914; upon the fourth cause of action for the sum of $125.00 with interest thereon at the rate of 6% per annum from April 1st, 1914; upon the fifth cause of action for the sum of $150.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; upon the sixth cause of action for the sum of $175.00 with interest thereon at the rate of 6% per annum from March 1st, 1914; and upon the seventh cause of action for the sum of $2,785.94 with interest thereon at the rate of 6% per annum from March 22nd, 1915; and for its costs and disbursements incurred herein taxed at the sum of $.....and that execution issue therefor.

Dated at Portland, Oregon, August 10th, 1915.

R. S. BEAN, Judge."

ASSIGNMENT OF ERROR NO. 4.

That the court erred in disallowing defendant's proposed finding of fact, as to plaintiff's first cause of action, said proposed finding of fact being as follows, to-wit:

I.

"That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor's Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof and is marked Plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendant shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work, plaintiff supplied to one Louis Weich water for drinking purposes during the months of August and September, 1913, and while the aforesaid policy was in full force and effect. That said Louis Weich by reason of drinking said water so furnished by plaintiff contracted typhoid fever and afterwards, to-wit:

On the 15th day of January, 1914, said Louis Weich brought action against the plaintiff in the Circuit Court of the State of Oregon, for Multnomah County, in which he alleged that the water furnished him by the plaintiff was unwholesome and unfit for drinking purposes and that the plaintiff was careless and negligent in furnishing him such unwholesome drinking water and that by reason of said action, this plaintiff was required to incur expense in defending said action, as follows, to-wit:

Filing fees, less refund	$ 2.90
Automobile hire	21.38
Attorney's and Claim Agent's fees	588.00
Reporter's fees	232.90
Witness fees	75.00
Doctor's fees (expert testimony)	160.00
Sum paid in compromise settlement	600.00
	$1680.88

That said sum was paid by the plaintiff and is a reasonable disbursement in said action of Louis Weich, being the first cause of action set forth in plaintiff's complaint.

VII.

That said sum of $1680.88 was paid by this plaintiff on the 30th day of April, 1914. That the injuries suffered by the said Louis Weich resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for

indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy."

ASSIGNMENT OF ERROR NO. 5.

That the court erred in disallowing defendant's proposed Finding of Fact, as to plaintiff's second cause of action, said proposed Finding of Fact being as follows, to-wit:

I.

The plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road, in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered for a valuable consid-

eration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy, and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff supplied to one Joseph Duerst, an employee of

plaintiff, water to drink; that said Joseph Duerst claims that he contracted typhoid fever from drinking said water and on the 9th day of April, 1914, said Joseph Duerst commenced an action in the Circuit Court of the State of Oregon for Multnomah County, claiming that this plaintiff had been negligent in supplying his unwholesome and unfit drinking water; that said plaintiff was compelled to contest and defend said action at its own expense, defendant having declined to defend said action as provided by the policy; that this plaintiff in defending said action and in compromising the same was required to make the following expenditures:

Settlement and compromise with Joseph Duerst	$150.00
Clerk's fees less refund	.95
Doctor's fees in examination	15.00
Attorney's and claim agent's fees	96.35
	$ 262.30

That said sum of $262.30 was paid by the plaintiff and is a reasonable disbursement in said claim of said Joseph Duerst, being the plaintiff's second cause of action herein.

VII.

That said sum of $262.30 was paid by this plaintiff on the 31st day of August, 1914; that the injuries suffered by the said Joseph Duerst resulted from typhoid fever; that the policy of insurance

issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy."

ASSIGNMENT OF ERROR NO. 6.

That the Court erred in disallowing defendant's proposed Finding of Fact, as to plaintiff's third cause of action, said proposed Finding of Fact being as follows, to-wit:

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant

made, executed and delivered for a valuable consideration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employees of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plain-

tiff supplied to one C. Hastings drinking water, during the months of July, August and September in the year 1913; that said C. Hastings alleged that he contracted typhoid fever from drinking said water; that said water was unwholesome and unfit and that plaintiff was negligent in furnishing the same to said C. Hastings; that said C. Hastings made claim against this plaintiff for damages by reason of injuries suffered in contracting said typhoid fever from drinking said water and threatened to bring action against plaintiff unless settlement was made, that plaintiff incurred and paid in disposing of said claim of said C. Hastings, the following sum:

Paid in settlement to said C. Hastings	$150.00
Attorney's fees	50.00
	$200.00

That said sum of $200.00 is a reasonable disbursement in said claim of said C. Hastings and was paid by this plaintiff; that defendant denied liability under its policy of insurance on the ground that typhoid fever was not covered under said policy and was not a bodily injury accidentally suffered.

VII.

That said sum of $200.00 was paid by this plaintiff on the 1st day of December, 1914; that the in-

juries suffered by the said C. Hastings resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy."

ASSIGNMENT OF ERROR NO. 7.

That the court erred in disallowing defendant's proposed Finding of Fact, as to plaintiff's fourth cause of action, said proposed Finding of Fact being as follows, to-wit:

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance, in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered for a valuable consideration a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof and is marked plaintiff's exhibit "A."

IV.

That said policy among other things provides that the defendant shall indemnify the plaintiff against loss and or expense arising or resutling from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employees of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon, and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months, beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plaintiff supplied to one Otto Bush drinking water; that said Otto Bush claims that said water was contaminated, impregnated and unfit and that as a result of drinking said water he contratced typhoid fever; that the defendnat company claimed and contended that typhoid fever was not a bodily injury accidentally suffered and declined to defend against said claim; that said Otto Bush threatened suit against this plaintiff by reason of said illness. Whereupon this plaintiff paid in disposing of said claim of Otto Bush, the following sums:

Settlement and compromise of claim of said Otto Bush	$100.00
Attorney's fees	25.00
	$125.00

That said sum of $125.00 is a reasonable disbursement of said claim of Otto Bush and was paid by plaintiff.

VII.

That said sum of $125.00 was paid by this plaintiff on the 1st day of April, 1914; that the injuries suffered by the said Otto Bush resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suf-

fered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of the policy."

ASSIGNMENT OF ERROR NO. 8.

That the court erred in disallowing defendant's proposed Finding of Fact, as to plaintiff's fifth cause of action said proposed Finding of Fact being as follows, to-wit:

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road, in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable

consideration, a policy of insurance, being numbered E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employee or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon; and that the defendant defend at its own costs any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work plain-

tiff supplied to one George Harbick, drinking water which said George Harbick claims was contaminated, unwholesome and unfit and from which he claims he contracted typhoid fever and claimed that plaintiff had been negligent and careless in furnishing him said drinking water and threatened to bring suit against this plaintiff by reason of sad negligence; whereupon plaintiff was required to and did in disposing of said claim make the following payments:

Paid in settlement to George Harbick	$125.00
Attorney's fees	25.00
	$150.00

That said sum was paid by the plaintiff and is a reasonable disbursement; that the defendant denied liability under its policy on the ground that said policy did not cover injuries resulting from typhoid fever and that typhoid fever is not a bodily injury accidentally suffered.

VII.

That the said sum of $150.00 was paid by this plaintiff on March 1st, 1914. That the injuries suffered by the said George Harbick resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally

suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy."

ASSIGNMENT OF ERROR NO. 9.

That the court erred in disallowing defendant's proposed Finding of Fact, as to plaintiff's sixth cause of action, said proposed Finding of Fact being as folows, to-wit:

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consid-

eration, a policy of insurance being numbered E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof, and is marked plaintiff's exhibit "A."

IV.

That said policy among other things provides that the defendant shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon; and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1914.

VI.

That in carrying on said construction work, plaintiff furnished drinking water to one F. Kohl; that

said F. Kohl claimed said water was unwholesome, unfit and contaminated with typhoid germs and as a result of drinking said water, said F. Kohl claims he contracted typhoid fever and alleged that plaintiff was careless and negligent in furnishing him said unwholesome and unfit water, and threatened suit against this plaintiff; that in disposing of said claim of said F. Kohl, plaintiff made the following payments:

Paid F. Kohl in settlement.....	$150.00
Attorney's fees	25.00
	$175.00

That said sum was paid by the plaintiff and is a reasonable disbursement in said claim of said F. Kohl; that defendant denied liability under its policy contending that typhoid fever was not a bodily injury accidentally suffered and refused to accept or pay said disbursements.

VII.

That said sum of $175.00 was paid by this plaintiff on the 1st day of March, 1914; that the injuries suffered by the said F. Kohl resulted from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries acidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy."

ASSIGNMENT OF ERROR NO. 10.

That the court erred in disallowing defendant's proposed Finding of Fact, as to plaintiff's seventh cause of action, said proposed Finding of Fact being as follows, to-wit:

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, and from the 20th day of March, 1913, to the 1st day of January, 1914, was engaged in the construction of a gas plant on the Linnton Road, in Multnomah County, Oregon, near the Government Moorings.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and engaged in general life, liability and accident insurance in the State of Oregon.

III.

That on or about March 20th, 1913, this defendant made, executed and delivered, for a valuable consideration, a policy of insurance, being numbered E-91221 and entitled "Contractor Employer's Liability Policy" and which policy was introduced in evidence and made a part hereof and is marked plaintiff's Exhibit "A."

IV.

That said policy among other things provides that the defendants shall indemnify the plaintiff against loss and or expense arising or resulting from claims upon the plaintiff for damages on account of bodily injuries accidentally suffered or alleged to have been suffered by an employe or employes of the plaintiff by reason of plaintiff's construction work and business conducted by the plaintiff on its premises on the Linnton Road, Multnomah County, Oregon; and that defendant defend at its own cost any and all actions brought against plaintiff to enforce a claim for damages.

V.

That the term of said policy was for a period of six months beginning on the 20th day of March, 1913, at noon, and ending on the 20th day of September, 1913, at noon, and by agreements duly made and endorsed on said policy the same was extended from time to time until noon of January 1st, 1913.

VI.

That in carrying on said construction work, plaintiff supplied to one I. M. Andrus drinking water during the months of July, August and September; that said I. M. Andrus claims that he contracted typhoid fever from the drinking of such water: that said water was contaminated with typhoid germs

and that plaintiff was careless and negligent in furnishing such contaminated water to its employes; that on the 13th day of February, 1914, said I. M. Andrus brought action against the plaintiff in the Circuit Court of Multnomah County, for the State of Oregon, and for damages resulting from said illness contracted as he claims from drinking said water; that plaintiff in defending said claim and suit incurred and paid the following sums of money:

Fees in Circuit Court	$ 9.15
Witness fees and expert testimony	90.00
Reporter's fees	150.00
Automobile expense	1.75
Appeal bond	27.30
Filing fee in Supreme Court and copy of transcript	28.48
Printed abstract and briefs in Supreme Court	82.16
Attorney's and Claim Agent's fees	761.20
Amount paid in compromise settlement	1635.00
	$2785.94

That said sum was paid by the plaintiff and is a reasonable disbursement; that defendant denied liability under its policy on the ground that typhoid fever was not a bodily injury *accidently* suffered.

That said sum of $2785.94 was paid by this plaintiff on the 22nd day of March, 1915; that the injuries suffered by the said I. M. Andrus resulted

from typhoid fever; that the policy of insurance issued by the defendant to the plaintiff provides for indemnity on account of bodily injuries accidentally suffered or alleged to have been suffered; that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview or terms of said policy."

ASSIGNMENT OF ERROR NO. 11.

That the court erred in disallowing defendant's proposed general Finding of Fact upon all the causes of action set forth in plaintiff's complaint, said proposed general Finding of Fact being as follows, to-wit:

"And generally the court finds that said Louis Weich, Joseph Duerst, C. Hastings, Otto Bush, George Harbick, F. Kohl and I. M. Andrus were all employes of the plaintiff company during the months of July, August and September, and particularly during the time that said employes contracted said typhoid fever; that the defendant company contended that said policy of insurance did not cover typhoid fever for the reason that typhoid fever was not a bodily injury accidentally suffered and declined to indemnify plaintiff for any disbursement that plaintiff might make; that the damages claimed by said employes were all for typhoid fever resulting from the drinking of water which was furnished said employes by plaintiff during the working hours of said plaintiff."

ASSIGNMENT OF ERROR NO. 12.

That the court erred in disallowing defendant's proposed Conclusions of Law, as to plaintiff's first cause of action, said proposed conclusion of law being as follows, to-wit:

"Based upon the court's Findings of Fact upon plaintiff's first cause of action, the court concludes that plaintiff is not entitled to recover upon its first cause of action and that the defendant is entitled to its costs and disbursements upon said first cause of action."

ASSIGNMENT OF ERROR NO. 13.

That the court erred in disallowing defendant's proposed Conclusion of Law, as to plaintiff's second cause of action, said proposed conclusion of law being as follows, to-wit:

"Based upon the court's Findings of Fact upon plaintiff's second cause of action the court concludes that plaintiff is not entitled to recover upon its second cause of action and that the defendant is entitled to its costs and disbursements upon said second cause of action."

ASSIGNMENT OF ERROR NO. 14.

That the court erred in disallowing defendant's proposed Conclusion of Law, as to plaintiff's third

cause of action, said proposed Conclusion of Law being as follows, to-wit:

"Based upon the court's Findings of Fact upon plaintiff's third cause of action, the court concludes that plaintiff is not entitled to its costs and disbursements upon said third cause of action."

ASSIGNMENT OF ERROR NO. 15.

That the court erred in disallowing defendant's proposed Conclusion of Law, as to plaintiff's fourth cause of action, said proposed Conclusion of Law being as follows, to-wit:

"Based upon the court's Findings of Fact upon plaintiff's fourth cause of action, the court concludes that plaintiff is not entitled to recover upon its fourth cause of action and that the defendant is entitled to its costs and disbursements upon said fourth cause of action."

ASSIGNMENT OF ERROR NO. 16.

That the court erred in disallowing defendant's proposed Conclusion of Law, as to plaintiff's fifth cause of action, said proposed Conclusion of Law being as follows, to-wit:

"Based upon the court's Findings of Fact, upon plaintiff's fifth cause of action, the court concludes that plaintiff is not entitled to recover upon its fifth cause of action and that the defendant is entitled

to its costs and disbursements upon said fifth cause of action."

ASSIGNMENT OF ERROR NO. 17.

That the court erred in disallowing defendant's proposed Conclusion of Law, as to plaintiff's sixth cause of action, said proposed Conclusion of Law being as follows, to-wit:

"Based upon the court's Findings of Fact upon plaintiff's sixth cause of action, the court concludes that plaintiff is not entitled to recover upon its sixth cause of action, and that the defendant is entitled to its costs and disbursements upon said sixth cause of action."

ASSIGNMENT OF ERROR NO. 18.

That the court erred in disallowing defendant's proposed Conclusion of Law, as to plaintiff's seventh cause of action, said proposed Conclusion of Law being as follows, to-wit:

"Based upon the court's Findings of Fact upon plaintiff's seventh cause of action, the court concludes that plaintiff is not entitled to recover upon its seventh cause of action and that the defendant is entitled to its costs and disbursements upon said seventh cause of action."

ASSIGNMENT OF ERROR NO. 19.

That the court erred in disallowing defendant's proposed Conclusion of Law, upon all of the causes of action set forth in plaintiff's complaint.

"And the court concludes that plaintiff is not entitled to recover in this action, for the reason that typhoid fever is not a bodily injury accidentally suffered and does not come within the purview of said policy of insurance."

Portland, Oregon, August 12th, 1915.

SENN, ECKWALL & RECKEN,
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 12th day of August, 1915.

JOHN A. LAING,
One of Attorneys for Plaintiff.

Filed August 12, 1915. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 12th day of August, 1915, there was duly filed in said court, and cause, a Bond on Writ of Error, in words and figures as follows, to-wit:

KNOW ALL MEN BY THESE PRESENTS, that we, the Aetna Life Insurance Company, a corporation of the State of Connecticut, as principal, and The Aetna Accident and Liability Company, of Hartford, Connecticut, as surety, are held and firmly bound unto the Portland Gas & Coke Company, in the sum of seven thousand dollars, to be paid to the

said Portland Gas & Coke Company, for the payment of which well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of August, 1915.

WHEREAS, the above named Aetna Life Insurance Company has applied for and obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Judicial Circuit to reverse the judgment rendered in the above entitled cause by the District Court of the United States for the District of Oregon.

NOW, THEREFORE, the condition of this obligation is such that if the said Aetna Life Insurance Company shall prosecute said writ to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

AETNA LIFE INSURANCE COMPANY,
By Paul C. Bates, Managing Agent.

THE AETNA ACCIDENT & LIABILITY COMPANY,
By Paul C. Bates, Its Resident Vice-President.

Attest: ALFRED L. LOMAX,
Its Resident Assistant Secretary.

THE AETNA ACCIDENT & LIABILITY COMPANY,

By McCargar, Bates & Lively, Its Local and General Agents.

By Paul C. Bates, Member of Firm.

(Seal, Aetna Accident and Liability Co.)

The within bond is hereby aproved this 12th day of August, 1915.

R. S. BEAN, Judge.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the within Undertaking is hereby accepted in Multnomah County, Oregon, this 12th day of August, 1915.

JOHN A. LAING,
One of the Attorneys for Plaintiff.

Filed August 12, 1915. G. H. Marsh, Clerk.

And Afterwards, to-wit, on Thursday, the 12th day of August, 1915, the same being the 34th judicial day of the regular July term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United Statse for the District of Oregon.

PORTLAND GAS & COKE COMPANY,
a Corporation,
Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY,
a Corporation,
Defendant.

ORDER ALLOWING WRIT OF ERROR.

On this 12th day of August, 1915, came the above named defendant by F. S. Senn, its attorney, and filed herein and presented to the court its petition praying for the allowance of a writ of error, intended to be urged by the defendant, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered on the 5th day of August, 1915, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and such other and further proceedings may be had as may appear proper in the premises.

ON CONSIDERATION WHEREOF, the court does hereby allow the said writ of error and that citation issue as by law provided.

IT IS FURTHER ORDERED that the amount of the supersedeas bond to be given by said defend-

ant be and the same is hereby fixed at the sum of seven thousand dollars with good and sufficient surety to be approved by this court, which bond now being filed with the Aetna Accident and Liability Company as surety, is hereby approved and execution issued herein is recalled and stayed.

Dated August 12th, 1915.

R. S. BEAN, Judge.

Filed August 12, 1915. G. H. Marsh, Clerk.

CLERK'S CERTIFICATE TO TRANSCRIPT.

United States of America,
District of Oregon.—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record upon Writ of Error in the case of Portland Gas & Coke Company, a corporation, plaintiff, and defendant in error, against Aetna Life Insurance Company, a corporation, defendant, and plaintiff in error, in accordance with the law and the rules of Court, and that the said transcript is a true and correct transcript of the record and proceedings had in said Court as the same appear of record and on file in my office and in my custody.

And I further certify that the cost of the foregoing transcript is $..... for the fees of the clerk, and $....., cost of the printing of said record.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this.....day of August, A. D., 1915.

.....
Clerk.